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The Governments of Europe



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William Bennett Munro

and Morley Ayearst

THE GOVERNMENTS OF EUROPE

4TH EDITION

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PREFACE

The interest of Americans in the governments of European countries has been developed into greater activity by the events of the past dozen years. It is no longer possible to look upon the governments of those countries as something outside the American orbit. On the contrary, some knowledge of them is now essential to an intelligent appraisal of our own public affairs.

The aim of this book, therefore, is to describe in a general way the organization and methods of government in the chief European countries—Great Britain, France, Germany, Italy, and Russia, with some attention to certain lesser European countries as well. A supplementary chapter on Japan has been added for reasons which are given in the opening paragraph of that chapter.

In the allocation of space to the various countries, the authors have tried to keep in mind the fact that this book is designed primarily for American readers and that the study of foreign governments by such readers is mainly useful for the light which it may throw upon their own.

The political institutions and traditions of the United States are largely a heritage from Great Britain. They have been greatly modified in the course of time, it is true, but they still bear the marks of their paternity. That is why the government of Great Britain and the British Commonwealth is given what may seem to be more than proportionate space. The European dictatorships, such as Russia and East Germany, are momentarily occupying a large place in the public attention, but this does not mean that they deserve an equal amount of intensive study by serious minds as governments long established upon foundations of free popular consent. Their institutions are as yet so poorly stabilized and so badly articulated that some of them may turn out to represent no more than a passing phase in governmental evolution. This volume, at any rate, has been planned and written on the assumption that governments of the democratic type are not going to perish from the earth, and that autocracy is not the great divine event toward which the whole creation moves.

More than the usual amount of space, moreover, has been devoted to the history of government in the various countries. This has been done because of a firm belief that it is quite impossible to acquire a clear understanding of political institutions without knowing how and why they came into being. All governments, no matter how novel they may claim to be, are in large measure

what time and circumstance have made them. They are largely the product of geography, race, and traditions. Their past, present, and future are all parts of a seamless web. Political history, political philosophy, and political practice cannot be dissociated in presenting a true picture of any governmental organism as a whole.

Government, in other words, is not a mere matter of human caprice. It is amazing how few enduring political institutions have ever been spontaneously created as compared with those which have slowly evolved. Some knowledge of history, therefore, is always essential to political perspective.

Since the chapters of this book cover so wide and complex a range of matters that many of them have had to be treated in a rather general way, it has seemed desirable to append more extensive bibliographies than would ordinarily be included in a volume of this sort. It is hoped that they will enhance the value of the book to serious students of European government.

Perhaps in fairness to the joint authors it should be explained that Mr. Munro has been largely responsible for the chapters on Great Britain and France while the remaining chapters of the book are in the main, and in some cases wholly, the work of Mr. Ayearst.

A word of appreciation should be tendered for counsel generously given by Mr. Wilfrid Harrison of Queens College, Oxford, on British government, by Professor Boris Mirkine-Guetzévitch and Mr. David Salfati in connection with the chapters on France, and by Professor Ellsworth Raymond on those relating to the Soviet Union.

A sincere expression of gratitude is due Mrs. Ethel H. Rogers of Pasadena for invaluable assistance in connection with both the manuscript and the proof sheets of this book.

W.B.M.
M.A.

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Introduction

CHAPTER I

The Science and Art of Government

A people may prefer a free government; but if from indolence, or carelessness, or cowardice, or want of public spirit, they are unequal to the exertions necessary for preserving it; if they will not fight for it when directly attacked; if they can be deluded by the artifices used to cheat them out of it; if by momentary discouragement, or temporary panic or a fit of enthusiasm for an individual, they can be induced to lay their liberties at the feet of even a great man, or trust him with powers which enable him to subvert their institutions—in all these cases they are unfit for liberty.—John Stuart Mill

What is the science of government? Yes, what is the science of government? It is a field of study that deals with the evolution, organization, and activities of rulership. It is concerned with the beginnings of political authority, with the history of government, with government as a present-day institution, and with government as a functioning mechanism; in short, with what government has been, is, and does. Thus it deals with something which has existed from the beginning of time, which extends over the entire range of human society, and is the most influential of all agencies for the promotion of good or evil among men and nations. Ralph Waldo Emerson once defined it as “the greatest science and service of mankind.” It is a science because it seeks to organize the facts of government into an intelligible and coherent structure. It is a service because it seeks to discover principles which may guide the people in the pursuit of happiness.

Why it is a difficult science. People do not always realize, however, that the science of government is one of the most difficult among all fields of scientific study. Its subject-matter is vast, both in time and space. Its phenomena are more complex than are those of any natural science, for their relationships are influenced by a far greater number of variables. Difficulties also arise from the impossibility of maintaining a complete intellectual neutrality in the analysis of

political problems. The emotional bias, from which no human intellect is free, cannot be eradicated by a pious resolution. Political prejudice warps the judgment of every living man (whether he realizes it or not), and necessarily affects both his habits of thought and his conclusions. As an English philosopher once remarked, the reason that students of government do not more frequently arrive at the truth is that they do not wish to. All too often they are more zealous in fitting the facts to their own mental stereotypes than in rigidly following the path that leads to an impartial judgment.

The lack of measuring devices. But the most important handicap that burdens the serious student of government is the impossibility of measuring, with any degree of accuracy, the strength of the forces with which he has to deal. The astronomer has his spectroscope and the chemist his scales; the student of political science has no such mechanical aids. He cannot reduce his data to metricized form. No giant eye is at his disposal for the observation of phenomena which have low visibility, nor is there any electron microscope to help clarify his dissection of them. No thermometer or barometer has yet been devised to gauge with precision the temperatures and pressures of the political scene. Lacking all such aids to technical exactitude the student of government is forced to substitute his own appraisal of the facts and forces—a rather poor substitute it is, and one which carries his methodology back to where that of the natural scientist was in the time of Copernicus.

A laboratory science. Yet the study of government is in a certain sense a laboratory study—with the entire world for a laboratory. Everywhere, across the land surface of the globe, the process of experimentation with new forms and methods of government is going on, in ceaseless round. The past three decades have seen an unprecedented amount of this political adventuring; every device or rulership that human ingenuity can suggest has had, or is having, its trial somewhere. The astrophysicist who scans the heavens can behold no such continuous procession of supernovae, or exploding stars, as that which may be seen with the naked eye by anyone who watches the political activities of his fellow men. The political firmament is alive with comets and meteors which are having their momentary flash in popular acclaim. Every new constitution, law, ordinance, decree, or directive is an experiment in political science; so is the election or appointment of every public official. But it is not a controlled experiment, which means that it is rarely a conclusive one. Every observer deems himself created free and equal in the inalienable right to frame his own interpretation of the outcome. Political science, if it be a science at all, is thus an observational rather than an experimental one.

An analogy. Let me illustrate by analogy. Suppose you take a thousand boulders of varying size and drop them one after another, at irregular intervals

and locations, into a body of water. There would presently be set in motion a thousand circular waves, moving with varying degrees of rapidity and quickly intersecting. These waves would in some cases intensify, in other cases neutralize, one another. Then drop a small pebble into this activated pool and ask those who are standing on the bank to tell you its precise effect upon the ruffled surface! There will be as many differing estimates as there are observers, and probably none of them will be right. Yet every action of a government, every war or rumor of war, every slight vibration of the economic structure, every twist or turn in governmental policy sets into motion a ripple whose strength and direction cannot be accurately determined because of the intersecting, intensifying, or neutralizing waves that are already there. In the science of government it is rarely possible to isolate one factor at a time.

And even when this could be done there remains the difficulty that what is true of one community may not be true of another. An atom of hydrogen is exactly the same thing in Moscow, Manchester, or Minneapolis—but an atom of the electorate (a voter) is not. The same temperature and barometric pressure will cause water to vaporize in Spain or in Sweden; but it does not take the same amount of political heat to generate a revolution. In the domain of political science it is hazardous to generalize from one community's experience and apply the lesson to another. No social fact is conclusive in its implications when divorced from its environment. Seven hundred years of successful experience with trial by jury in England does not afford even *prima facie* proof that this form of judicial procedure can ever be used with the same success in China, or even in France, only thirty miles away. Institutions operate among peoples, not merely in geographical areas.

The art of appraising political forces. Under such circumstances the best that the student of government can do is to bring together the available data concerning political systems past and present, sift this material carefully, compare the results of one governmental experiment with another, and cautiously draw a few qualified conclusions. By continued practice he will acquire a certain amount of skill and facility in the analysis and evaluation of political institutions and forces. He will learn to cut through the husks of form and reach the kernels of reality. He will become skeptical of generalities and critical of formulas. And he will presently discover that nearly all the activities of government are phenomena of pressure—the push and resistance of human groups—and that the existing political situation at any given moment is due to the momentary balancing of these groups. This means that the careful observer will gradually concern himself less with the anatomy of a government and more with its physiology, less with its formal structure and more with its traditions, trends, processes, and functional actualities. More especially he will be led to

the conclusion that there is a good deal to be studied beneath the visible framework of government, and that power does not always reside where it is supposed to be.

How a knowledge of history helps. Now the most useful adjunct that one can acquire in this connection is a knowledge of history. Sir John Seeley once remarked that "history is past politics, and politics present history." Of course history is more than past politics, but the political activities of mankind cut a wide swath in its pages. To understand any governmental problem one must know why and how it became a problem. In almost every instance it will be found to be a development from something preceding, or a reaction against something, or an adaptation to something. All governments are living organisms which inherit from the past and transmit to the future. Revolutions, no matter how revolutionary, never represent a complete break in the continuity of a nation's political evolution. Often they merely sweep away old institutions and then revive them under new names—as when the French Revolution uprooted the intendants and replaced them by prefects, or when the Russians abolished the Czarist secret police and put the OGPU in their place.

A study in dynamics. Every government, accordingly, is a going concern, which carries something from the yesterday into today, and something from today into tomorrow. No such words as "stalemate," "standstill," "stationary," or "static" have any rightful place in dictionaries of political science. In the lexicon of politics there is no such thing as finality. Forms and methods of rulership are in a never-ending process of change. Sometimes this process is slow; at other times the wheels of change are speeded up. When they are sufficiently accelerated we have what is termed a revolution, reconstruction, or new deal. The governments of the world have been passing through such a transition during the past forty years. They have done the same thing before, and probably will continue to do it at more or less unpredictable intervals in the future. The fundamental reason for political revolutions, *coups d'état* and new deals may be found in the simple fact that governments under normal conditions are slow-moving affairs. They do not usually manage to keep step with economic changes or with the new popular orientation which such changes inspire.

Ideas, as a rule, travel less rapidly than events. The human race is more proficient in devising new methods for the production of wealth than in maturing plans whereby men may be better governed. Since the day when man was condemned to eat bread in the sweat of his brow he has devoted the bulk of his energies to getting the most bread for the least sweat. He has not been over-concerned about the amount of perspiration that this might engender upon his neighbor's brow.

Why we have political transitions. So a widening gap develops between the facts of national life and what the government assumes them to be, between what the people think they want and what the government is giving them. Governments, as a matter of fact, have even less imagination and initiative than the usual run of individuals, which means they haven't much of either. That is why political institutions and methods which were devised for use in simple agricultural communities are sometimes carried over, without much change, into a complex and highly mechanized industrial age. Then, when the discordance becomes so loud that everyone can hear it there is a vigorous popular demand that governmental organization and methods be revamped and radically overhauled. To accomplish this necessitates the upsetting of many cherished idols in a disconcerting way. But it is merely a matter of doing, under the stress of emergency, what should have been done by easy stages over a number of years. A revolution, *coup d'état*, new regime, or any other radical reorganization is something that governments bring upon themselves by their inertia more often than by their ineptitude—by their sins of omission more often than by positive malfeasance. Governments long established, as Jefferson said, "should not be changed for light or transient causes"; but the tendency of political power to tolerate abuses may expand these causes to a point where the people regard them as neither light nor transient.

THE CLASSIFICATION OF GOVERNMENTS

Back to Aristotle. A generation ago it was the custom of books on political science to begin with a classification of governments by going back to Aristotle, who was the first to make a division of normal governments into three types: monarchy, aristocracy, and democracy. This classification was a quantitative one based upon the number of persons who did the governing, be this number a single person, a few, or the many. It was not related to the measure in which the rulers gave liberties to their people, or tolerated a loyal opposition, or dealt with private property. But an Aristotle of today would find the ancient classification inadequate for any useful purpose. Great Britain would be classed as a monarchy, so would Greece—although the governments of these two monarchies have now nothing in common except a titular chief executive who owes his throne to inheritance. India would be rated as a democracy, with her Rule of the Many, for she has plenty of people trying to govern her. Russia, where the substance of power rests with a small fraction of the people—the leaders of the Communist party—would be listed as an aristocracy, and as for Germany under Hitler, it would hardly have fitted into the Aristotelian classification of normal types anywhere.

No brief classification possible today. The task of arranging all the gov-

ernments of today under three or four headings is an impossible one. There are all kinds of monarchies, from Siam to Sweden. There are republics in endless differentiation, federal and unitary, presidential and parliamentary, autocratic and popular. France is a republic—but of a unitary and parliamentary type. The United States is also a republic—but represents the federal and presidential form. There are other countries which call themselves republics but are in fact little more than military dictatorships. There are Communist republics, such as Yugoslavia, and non-Communist republics, such as Brazil. There are some monarchies and republics which tolerate the free play of political parties, as in Denmark and Switzerland, and there are others which permit only one political party to exist. Yet the free toleration of political parties and freedom of the press afford the most dependable clues to the real character of any government. Any attempt at classification which overlooks this fundamental test is valueless, for it provides the true line of demarcation between governments that rule by popular consent and those that do not. There can be no “consent of the governed” where dissent is penalized.

Why this is so. The form of a government, Edmund Burke once said, “reaches but a little way.” It is the spirit of a government that counts. And the spirit of a government is not to be discovered by merely reading the constitution under which it operates. To determine the true character of a government one must compile a detailed inventory of its traditions, ideals, institutions, methods, and policies. The distinction between democracy and dictatorship does not depend upon how large a portion of the people are allowed to go through the motions of choosing their rulers. Dictatorship has shown itself to be compatible with universal suffrage. But it is not compatible with freedom of speech, an uncensored press, free elections, and the unfettered right of political parties to organize in opposition to the government.

Democracies in form; dictatorships in fact. Modern dictatorships have not found it necessary to abridge the voting privileges of the people. They merely make sure that the people vote right. Ostensibly they have governed by an outward show of virtually unanimous consent. Such an approach to unanimity is not a difficult thing to obtain when the government absolutely controls all the avenues of information and propaganda, when it employs every known form of official intimidation, and when it permits the people to vote for no candidates other than its own. The line which separates democracy from dictatorship, therefore, cannot be drawn by applying any formula, nor can it be ascertained by comparing constitutions, laws, and governmental forms. Much less can it be determined by accepting at face value the pious professions of political virtue with which most governments, of whatever sort, try to hypnotize both their own people and the outside world. To place governments in their

proper classification one must know them in all their relations and activities. And when that is done it will appear that there are nearly as many classes as there are governments.

The zenith of parliamentary government. In the opening years of the nineteenth century nearly all governments were absolute monarchies. Switzerland and the United States stood virtually alone as democratic republics. But during the long era which intervened between the French Revolution and the First World War, political liberalism fought its way forward, inch by inch, in the various countries of Western Europe. Popular revolutions overthrew absolutisms. Constitutions were wrung from reluctant monarchs, the suffrage was gradually extended, political parties developed, and freedom of political opinion widened. The end of this war in 1918 seemed to mark a great and final triumph for government by popular consent. The new constitutions which were framed during the aftermath of this struggle proclaimed themselves democratic from preamble to conclusion. They were full of solicitude for the rights of man; they provided for universal suffrage, free elections, the unhampered organization of political parties, and in some instances for the expression of the popular will by means of the initiative and referendum.

And its subsequent eclipse. But the tide receded soon and rapidly. The new constitutions were not administered in accordance with the ideals which they professed. Civil liberties were whittled away and dictators in due course took the helm in Germany, Italy, Russia, Spain, Turkey, and elsewhere. Democracy, as the nineteenth century understood the term, went into total or partial eclipse throughout a large part of Western Europe. The reasons for this change in political orientation during the years 1920-1940 are worth seeking, but they are not easy to explain, being neither few nor simple. In general they are related to the failure of the new democratic governments to cope with the national emergencies which resulted from the First World War and the subsequent peace treaties.

The shortcomings of democratic rulership. A democratic form of government, with power diffused into many hands, is not peculiarly well equipped for the handling of emergencies. It is not an ideal agency for solving acute national problems, either economic or political, in a prompt and decisive way. For it proceeds by deliberation and compromise; it is hampered by the rival ambitions of political parties; it is government by law, and not by executive decree. But there are times when prompt and forthright action in the domain of public policy becomes imperative. Emergencies will not wait while politicians debate, delay, and explore all the avenues of possible compromise. People want things done, and done right away, without caring much who does them or how. Such an occasion arose in the United States during the early days of March,

1933, but the American scheme of democratic government proved flexible enough to meet the situation. Some European countries were not so fortunate. Political parties fought and prime ministers fiddled while millions were thrown out of work and went hungry. Men in the mass will not starve in order to preserve ministerial responsibility, state rights, or freedom of speech. In their misery they will turn to some Moses, true or false, who promises to lead them out of the wilderness. Then, when they have reached the promised land of work and security, they find that they have pawned their liberties as the price of the journey. In Germany and Italy, during the twenty years 1925-1945, the people found that the road to economic security, by way of political dictatorship, is the most costly thoroughfare that the folly of man has ever constructed.

A prediction fulfilled. Democracy is a form of government based upon the assumption that man is a rational being. Sometimes he is, but too often he is swayed by his emotions and actuated by his prejudices. It may be true, as Lincoln said, that you can't fool all the people all the time, but you can sometimes fool enough of them to put a bad bargain across. Or, when they cannot be fooled, they can be intimidated, as millions were in the Axis countries before the Second World War. When people in those countries asked for a new deal, what they got was a new deck—not a change in the policies of government but in the whole structure of government. In countries which have developed a great and complex system of economic relationships one may seriously question whether the democratic scheme of government can always survive the pressures that may be put upon it by nation-wide economic dislocations. Even the most valiant among American protagonists of democracy, Thomas Jefferson, did not believe that it would permanently endure as a scheme of rulership. Better, perhaps, than any other statesman of his time he saw its limitations. Hence his prediction that when countries became industrialized, with large propertyless elements concentrated in the cities, the strain might prove heavier than the democratic plan of government could bear.

Moderata durant. The political world of today is a baffling world, full of rather fascinating confusion, a proving ground for conflicting political philosophies. It is passing through a period of transition, and such periods are always terrifying because of the uncertainties with which they are clouded. Yet all great eras in history have been interludes of transition, with an old order going out and a new one coming in. They have been great eras because they brought forth critical problems to be solved by adventuring minds. They have called for straight thinking in a welter of irrationality and crude emotionalism. They have also demanded moral courage and intellectual honesty, for new eras do not abolish the old virtues. And never have these ancient virtues been more needed than in an age when one country after another has

been thrown off balance; never has there been greater need for courage and faith as a counterpoise to the misery and disillusionment which have spread over so much of the world's surface. But individuals and nations should realize that there are certain inexorable laws of political science which cannot be repealed or amended by human statutes or decrees. One of these is the axiom that to barter the substance of civil liberty for the shadow of economic security is to make the kind of exchange which Esau made with Jacob.¹ Another is embodied in the aphorism of Seneca, written many centuries ago; "*Violenta nemo imperia continuit diu; moderata durant*"—"No one has ever been able to rule by force very long; it is moderate governments that endure."

¹ *Genesis* xxv: 31-34.

Great Britain

CHAPTER II

The Nature of the British Constitution

En Angleterre la constitution . . . elle n'existe point!—Alexis de Tocqueville

A land with and without a constitution. England is a land of contradictions. A French historian once assured his countrymen that no constitution operates in England, to which Englishmen made reply that they live under the oldest constitution in the world. Both are right. It is merely a question of what you mean by a constitution. There is no British constitution in the American sense, that is, a formal document embodying the nation's fundamental law. But the British people have a constitution according to their own definition of the term, and the story of its development forms one of the most significant chapters in the history of free government.

The mother of parliaments. As a matter of fact the art of self-government has been the greatest contribution of the Anglo-Saxon race to the progress of mankind. Civilized man has drawn his religious inspiration from the East, his alphabet from Egypt, his algebra from the Moors, his sculpture from Greece, and much of his legal philosophy from Rome. But for his political ideas and procedures he owes more to England than to any other nation. The British constitution is the mother of parliaments. No matter by what name the legislative bodies of other countries may be known, they owe much to this inheritance. Hence it is difficult for anyone to have a true understanding of any other free government unless he first gains some knowledge of its English antecedents. This democratization of a large part of the civilized world during the nineteenth century, largely through the influence of English-speaking leadership, is one of the most conspicuous facts in the history of political science.

Political genius of England and Rome. In the whole history of mankind only two peoples have made notable and permanent contributions to the art of governing great populations. The Romans did it in the ancient world; the

English-speaking peoples have done it in modern times. Ancient Rome elaborated a scheme of government and a system of law which for centuries exercised a profound influence in all regions of the then-known world. But Rome's political evolution carried her from a popular government to an absolute one, from a free republic to an imperial absolutism. The development of political institutions in England went in precisely the opposite direction. England began as an absolutism and evolved into a democracy. Her political institutions, by reason of their harmony with the needs of modern civilization, have been far more closely and more widely copied than were those of Rome.

Political evolution exemplified. Nor is it merely because of this world-wide influence that the constitution of Great Britain ought to be studied—and studied before that of any other country. It is the oldest among existing constitutions. With the exception of the half dozen years in which Oliver Cromwell quitted his farming and served as President of the English Republic under the title “Protector of the Commonwealth,” its general framework has undergone no radical overhauling for at least three centuries. Nowhere else has the world witnessed a political evolution so prolonged and so relatively free from great civil commotion. Not in a thousand years has England had a revolution comparable with the French Revolution of 1789 or the Russian Revolution of 1917. Not since Oliver Cromwell's time has she had a Hitler or a Mussolini. It is true that there have been so-called revolutions in England, but they did not deflect the main current of political development. So, while it is possible to mark out epochs or stages in the development of the British constitution, this is done by noting differences after long periods rather than by coming upon sudden transformations at definite times.

Why England developed free institutions. Three reasons account for the remarkable smoothness with which the course of British constitutional development has been run. The first is to be found in the geographical isolation of Britain from the mainland of Europe. Nothing but a narrow strip of channel separates England from the Continent, but these scanty miles of water have afforded a measure of defense which no other country of Western Europe has enjoyed.¹ During many centuries this protection obviated the need for a large standing army and thus withheld from the British monarchs the one weapon with which they might have crushed popular liberties as did the Bourbons in France and the Hapsburgs in Spain. Some English kings claimed the right to maintain a standing army, but they never succeeded in making good this claim, and the Bill of Rights (1689) eventually disposed of it by an express declaration that “the maintenance of a standing army in time of peace without the

¹ The only other European country which has had a relatively uninterrupted political development, akin to that of England, is Switzerland. Here also a partial explanation is to be found in the natural facilities for defense against armed invasion.

consent of parliament is contrary to law." England's insular position, therefore, is the most important clue to a proper understanding of her constitutional history. Shakespeare was not unmindful of this when he wrote of his native island as

This precious stone set in a silver sea,
Which serves it in the office of a wall,
Or as a moat defensive to a house
Against the envy of less happier lands.

2. A blend of freedom-loving peoples. In the second place the political evolution of England owes something to the fact that the English people are a happy amalgam of Celt, Saxon, Dane, and Norman, all of them people with strong traditions of both freedom and law, and sufficiently similar to mix readily without developing a conqueror-caste or its counterpart, an oppressed sub-nationality. So strong and persistent has been this British love of political freedom that it became the basic cause of Britain's difficulties with her own colonies. The people of the British Isles and their descendants, wherever scattered, have in all ages been hostile to improvised, uncertain, or dictatorial government. Although religious differences were involved in the troubles of the seventeenth century, it can be said that religion has been less divisive in England than in many other European countries.

3. Her constitutional flexibility. And something, finally, must be attributed to the happy accident that no rigid constitutional framework was devised in the earlier stages of British history to hold the course of political development in bondage. Englishmen have never had much use for political abstractions. In general they have not looked for logic or system in their government. They are not worried by political inconsistencies or anachronisms, or even by what seem to be absurdities. During the past twenty years a great revolution has taken place in the spirit and scope of British government, but there has been almost no change in its structure. One might say that such features as a monarch and a House of Lords are ill-placed in the government of a democratic welfare-state, but Britishers do not worry about that. In reality they are far more concerned with the results than with the forms of political organization—more concerned with practice than with principles. Accordingly, the British constitution has never been constrained into stereotyped form. It has remained flexible, uncoded, and to a degree, indefinite.

ENGLISH CONSTITUTIONAL GROWTH

What is a constitution? The constitution of a state or nation consists of those fundamental provisions which determine its form and methods of government. It is the accepted basis of political action. Thomas Paine, one of the

philosophers of the American Revolution, argued that when a constitution cannot be produced in visible form there is none; but few would agree with that proposition nowadays. If certain rules, provisions, and customs are accepted by the people as the basis of government then they have a constitution. It matters little whether the basic rules are embodied in a single document, or in several documents, or in none at all. Constitution is derived from the Latin *constituere* which means to establish. A constitution is something established as the basis of government—whether by a constitutional convention or by process of evolution is immaterial. Most constitutions have been established by the former method; the British constitution is the outstanding example of the latter.

The American conception. Hence the American student who walked into a great London library many years ago and amused the attendant by asking for “a copy of the British constitution” was doing a perfectly logical thing from the American point of view. He knew that in his own country there is such a constitution; as a schoolboy he had seen it printed in textbooks. Perhaps he had undergone the scholastic oppression of being required to memorize its preamble. In public discussions he had heard the provisions of that document quoted as the last word, the supreme law of the land. To his way of thinking it was inevitable that a constitution should be a document, concise in form, orderly in arrangement, and definite in its terms.

It does not square with the facts. Yet it is far from accurate to say that the government of the American Republic rests on a single document. The real Constitution of the United States includes not only the document which was framed at Philadelphia in 1787, but all that has been read into it by the courts, and all that has been read out of it by Congress during the past 167 years. When James Bryce, in his *American Commonwealth*, asserted that the Constitution of the United States is “so concise and so general in its terms that it can be read in twenty minutes,” he did not mean to imply that anyone could obtain even an elementary grasp of all its implications in that length of time. By merely reading the 4,000 words of the federal constitution one would learn nothing about legislative procedure, the national administrative organization (with its numerous boards and bureaus), the federal system of courts, nominations and elections, state government, local government, party organization, and a dozen other matters which are of the greatest importance in the American political system. To read the American constitution in its wider sense would take not twenty minutes but twenty months.

The original English constitution. In the terminology of political science the word “constitution” was first employed by Englishmen to designate certain fundamental customs or ancient usages declared in solemn form by the king

with the assent of his Great Council. Thus Henry II, in 1164, issued a set of rules governing the relations between the secular and ecclesiastical courts, and these became known as the Constitutions of Clarendon. Ostensibly they were not new rules, but merely the old usages put into written form and formally declared. So it was with the provisions which the barons wrung from King John in 1215. On a much broader scale Magna Carta enumerated the various fundamental customs of the realm. It was a document of definition, not of legislation, and might just as well have been called the Constitution of Runnymede. This surrender of the king marked the beginning of constitutional government in Europe; that is, of government based upon a definite understanding between a monarch and his people, and with an official institution provided to see that the king kept the law.

Additions to it. But these constitutions and charters did not embody all the principles upon which the government of England rested during the succeeding centuries. From time to time they were supplemented by successive confirmations of the Great Charter, by the Provisions of Oxford (1259), and by a series of great statutes. Later came the Instrument of Government issued by Cromwell in 1653. This Instrument of Government was a formal written constitution in all its essentials, for it set forth in some detail the powers of the executive and the legislature. It established a British republic with legislative power vested in a single chamber and a president (lord protector) with a life tenure. But parliament never accepted this "constitution," and not long after Cromwell's death it merely decreed that the government of England should again be conducted "according to the ancient and fundamental laws of the kingdom." Thus ended the first and only experience of England as a republic under a formal, written constitution.

Spread of the idea. But this short-lived Cromwellian experiment was merely a prelude to a new experience with formal constitutions on the other side of the Atlantic. The American colonies caught the idea involved in the Instrument of Government and utilized it. During the latter part of the seventeenth century they revived the practice of using the term "constitution" to designate their own colonial charters. And after the Declaration of Independence, all the thirteen states used the word "constitution" to designate the groundwork of the new state governments which they were setting up. In other words, America borrowed the term from England, gave it a more precise meaning, and during the past 175 years has been largely responsible for the extension of it throughout the world.

What the "constitution" means to an Englishman. Great Britain has never had a constitutional convention like the one that met at Philadelphia in 1787. The British constitution is the product of continuous and almost im-

perceptible growth. That is why a distinguished French publicist once compared it to a “river whose moving surface glides slowly past one’s feet, curving in and out, and sometimes almost lost to view in the foliage.” In other words it is the result of a process in which charters, statutes, decisions, precedents, usages, and traditions have piled themselves one upon the other from age to age. Or, to use another metaphor, it is a rambling structure, to which successive owners have added wings and gables, porches, and pillars, thus modifying it to suit their immediate wants or the fashion of the time. Its architecture bears the imprint of many hands. It is neither Gothic nor Romanesque nor Florentine; neither Saxon, Celtic, Danish, Norman, nor even modernistic. Rather it is a mediæval edifice which has been renovated and modernized until only the outer walls remain recognizable.

A dynamic affair. To drop the architectural similitude let it merely be said that the provisions of the British constitution have never been systematized, codified, or put into an orderly form, and probably never will be. The task would be virtually impossible, for not only do the usages and traditions cover a wide range, but many of them are not sufficiently definite to be set down in writing. Moreover, they are continually in process of change, new customs replacing older ones. Precedents are being made almost daily, and these gradually solidify into “customs of the constitution.” Some of these customs of the constitution are now so firmly entrenched that everyone accepts them; others are by no means universally recognized; while others, again, are subjected to varying interpretations. It is a fixed and unquestioned usage of the British constitution, for example, that a ministry must resign or procure a new election when it ceases to command the support of a majority in the House of Commons, but it is not a universally accepted usage that it must do this on *any* adverse vote. The writer who set out to explain just what constitutes “want of confidence” in a ministry would have a hard time doing it.

Errors which have arisen from differences in definition. The difference in this respect between the British and American constitutions has been badly clouded by our habit of using the same word in two dissimilar senses. If we use the term “constitution” to include the entire body of written and unwritten rules and usages by which the fundamentals of government are determined, then both Great Britain and the United States are alike in possessing something that conforms to this description. In both countries this aggregation of fundamental rules, whether written or unwritten, is constantly developing, broadening, changing. The Constitution of the United States includes not only the original document of eighty-one sentences which were so laboriously put together at Philadelphia in 1787, but the vast mass of statutes, judicial decisions, precedents, and usages which have grown up around it. It is a live, grow-

ing organism which never stands still for a single day, and it never can stand still so long as Congress sits and the Supreme Court hands down decisions.² The American who spends a half hour in reading his national constitution may get a better idea of his country's government than does the Englishman who spends several hours in reading Magna Carta, the Bill of Rights, the Parliament Act, and the Statute of Westminster; but neither an American nor an Englishman can in this way gain any comprehensive idea of the political institutions under which he lives.

Hence the student who desires to follow Machiavelli's advice and concern himself with the truth of things rather than with an imaginary view of them will go beyond the formal documents in either case. He will bear in mind that the real constitution in both countries is like the photograph of an individual; no matter how good a likeness it may be today, it will not be so good a likeness ten years later. The general features of the individual, as of a government, may remain unaltered, but look closely and you will see that the countenance has changed.

An example. Too much stress has been placed upon an alleged distinction between written and unwritten constitutions. The outstanding feature of British government, we are often told, is that it rests on an unwritten constitution. This statement is more apt to mislead than to enlighten. A substantial portion of the fundamental law by which Great Britain is governed has been embodied in writing. The relations between England and Scotland, for example, and between England and Ireland, as well as between the mother country and the British dominions, the succession to the crown, the powers of the House of Lords, the organization and procedure of the courts—all these and many other fundamentals of British government are on record in black and white.

The elements in the British constitution: I. Great charters and other landmarks. What, then, is the constitution of Great Britain? It consists, one may say, of five elements, not all of which lend themselves to precise definition. First, there are certain charters, petitions, statutes, and other great constitutional landmarks such as Magna Carta (1215), the Petition of Right (1628), the Bill of Rights (1689), the Act of Settlement (1701), the Act of Union with Scotland (1707), the Great Reform Act (1832), the Parliament Act (1911), the Statute of Westminster (1931), and the India Independence Act (1947). Someone may suggest, perhaps, that the two last-named statutes are landmarks in the constitution of the British Commonwealth of Nations rather than in that of Great Britain, but their repercussions upon the government of the mother country were certainly of great importance. In any event these var-

² See William Bennett Munro, *The Makers of the Unwritten Constitution* (New York, 1929), pp. 1-26.

ious epoch-marking documents cover only a small portion of the fabric of British constitutional law. Most of them merely dealt with the grievances or necessities of the hour. They do not make a comprehensive code. Moreover, they are all within the power of parliament to change at any time.

✓ **2. Statutes.** Second, there is the great array of ordinary statutes which parliament has passed from time to time relating to such things as the suffrage, the methods of election, the powers and duties of public officials, the rights of the individual, and the routine methods of government. The right of women to vote, for example, is regarded by most Englishmen as a constitutional right; but it rests on a statute. There is, in fact, no legal difference between a great constitutional landmark such as the Statute of Westminster and any other statute.

✓ **3. Judicial decisions.** Third, there are judicial decisions interpreting the charters and statutes, explaining the scope and limitations of their various provisions. These correspond to the long line of decisions made by the courts on constitutional questions in the United States—except that the line is longer and the cases not so numerous.³

✓ **4. The common law.** Fourth, it is often said that the common law is a part of the British constitution. By the common law is meant that body of legal rules which grew up in England, apart altogether from any action of parliament, and eventually gained recognition throughout the realm. Such securities for personal liberty as the British constitution affords to those who live under it were for the most part brought into being by the common law, and these may fairly be said to form part of the British constitution in its broader sense. The common law, like statutory law, is continually in process of development by judicial decision.

✓ **5. The customs of the constitution.** Finally, there are various political customs or usages which have come to be scrupulously observed and hence exert a subtle influence on various branches of the government. Usage plays a larger part in the workings of the British constitution than in the constitution of any other country because it is older and the usages have had more time to grow. A considerable part of the British governmental system, in fact, rests on custom rather than upon laws or judicial decision—for example, such vital features as the responsibility of the prime minister to the House of Commons.⁴

Constitutional flexibility is not a British monopoly. A failure to ap-

³ Most of the important decisions can be found in D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (3rd edition, revised, Oxford, 1948.)

⁴ It has now become the practice of some English writers to add a further element, namely, the time-honored traditions of the constitution as set forth in the writings of recognized authorities on constitutional law and usage such as A. V. Dicey's *Law of the Constitution* on the broad principle of the Rule of Law and Erskine May's *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*. See L. S. Amery, *Thoughts on the Constitution* (London, 1947).

preciate the importance of usage and judicial interpretation as agencies of constitutional amendment has led to invidious comparisons between "that living, ever-changing organism, the British constitution" and "that embodiment of outworn ideals, faded hopes, old fears, primitive economic and social facts," the Constitution of the United States.⁵ Such statements, as has been shown, betray a failure to appreciate the realities. The Constitution of the United States is just as living and ever-changing as that of Great Britain, or more so. One might almost say that it undergoes some change every Monday morning when the Supreme Court hands down its decisions. No vigorous nation ever tolerates a lifeless constitution. If the methods of formal amendment prove too cumbersome, it finds some other agency of change. The United States, with the help of the Supreme Court, found it a great many years ago.

A final definition. So what is the constitution of Great Britain? It is a complex amalgam of institutions, principles, and practices; it is a composite of charters and statutes, of judicial decisions, of common law, of precedents, usages, and traditions. It is not one document, but hundreds of them. It is not derived from one source, but from several. It is not a completed thing, but a process of growth. It is a child of wisdom and of chance, whose course has been sometimes guided by accident and sometimes by high design.

How the British constitution is amended. Over every provision of this constitution, however, parliament is legally supreme.⁶ This sounds strange to American ears. In theory, at any rate, parliament can alter any feature of British government at will. No charter or statute, however fundamental, is placed beyond the power of parliament to change; there is no judicial decision that it cannot set aside, no usage that it cannot terminate, and no rule of the common law that it cannot overturn. All governmental powers rest ultimately in the hands of parliament. "The jurisdiction of parliament," to use the words of Sir Edward Coke, "is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds." It is desirable that every student of the British political system should firmly grasp this legal principle at the outset. The British parliament is as nearly sovereign as any mundane body can be. The only thing it cannot do is to bind its successors; it cannot interrupt or put an end to the process of constitutional change.

Constituent and lawmaking power are one and the same. In Great Britain, accordingly, there is no legal difference between *constituent* authority and *lawmaking* authority such as exists in the United States. In the national government of the United States the lawmaking power rests with Congress; but

⁵ Herman Finer, *Foreign Governments at Work* (Oxford, 1921), p. 57.

⁶ To be strictly accurate one should say that legal supremacy rests with the "crown-in-parliament," rather than with parliament alone. But, as will be explained in a later chapter, the assent of the crown is never withheld.

constituent power, that is, the power to amend the constitution, does not come within the scope of congressional authority. To amend the Constitution of the United States is far more difficult than to amend a statute, as is shown by the fact that although Congress passes several hundred laws at every session only nine constitutional amendments have been ratified during the past 100 years. The British parliament, by way of contrast, is supreme in both spheres; it is both the lawmaking and the constituent authority. Even the succession to the throne, as established by the Act of Settlement, can be changed by a simple statute if parliament desires to change it, and that is just what was done by the Abdication Act of 1936.

⁴ **Can an act of parliament be unconstitutional?** There is a marked difference, therefore, between the concept of unconstitutionality in the two countries. When we say in the United States that a law passed by Congress is "unconstitutional," we mean that it is contrary to some provision of the national constitution and hence has been declared invalid by the courts. In that sense no act of parliament can be unconstitutional. When an Englishman brands an act of parliament as "unconstitutional," he merely expresses his own opinion that it is a departure from the existing traditions of British government, that it is unjust, un-British, or an objectionable innovation. If parliament, for example, were to pass a law permitting civilians to be tried by a court martial in time of peace, the whole of Great Britain would undoubtedly rise up and protest that such action is unconstitutional. But no Englishman would think of calling upon the courts to nullify such a law or imagine for a moment that any court, save the High Court of Parliament itself, could set the law aside. They would demand that the obnoxious law be repealed, or failing this, that a general election be held to let the people choose a new parliament.

The asserted flexibility of the British constitution. This unrestrained legal supremacy of parliament, this power to amend the constitution by the process of ordinary lawmaking, is said to give the British political system a degree of flexibility which is not found in countries where the constituent and the lawmaking power are lodged in different hands. English writers have been in the habit of dilating upon this asserted virtue of their constitution which, they claim, permits it to be adapted more readily to new conditions than is possible in any other country. Many years ago Walter Bagehot, in his brilliant sketch of English government, dwelt at length on this theme.⁷ Parliament, he said, could abolish trial by jury, pass bills of attainder, confiscate private property without compensation, take the suffrage away from all but taxpayers, and even turn England into a republic.

Is it an actuality? In a legalistic sense all this is doubtless true. But there

⁷ *The English Constitution*. Many editions have been published.

is little profit in discussing an exercise of power based upon the assumption that parliament is going to transform itself into a madhouse. Legislators, in all lands, have a "decent respect for the opinions of mankind." What they could do if they dared is of far less consequence than what they dare to do. Legislators come from the people; they think and feel as the people do; they are saturated with the same hopes and fears; they are creatures of the same habits, and when habits solidify into traditions or usages they are stronger than laws, stronger than the provisions of written constitutions. The written Constitution of the United States forbids the taking of private property without just compensation, but that is not the reason why private property remains unconfiscated in America. Private property is just as inviolable in Great Britain although it is protected by no constitutional guarantees. The real reason for its immunity from confiscation in both countries is the same, namely, the existence of a nationwide belief that to take a man's property for public use without compensation is unjust, arbitrary, and an abuse of governmental power.

Flexibility depends on the breadth of the original provisions. The frequency with which the constitutional methods and practices of a nation are changed does not depend wholly, or even largely, upon the simplicity of the amending process. The flexibility of a constitution depends primarily on the breadth of its provisions. If the wording of a constitution is broad enough to permit considerable changes in governmental practice without any formal amendment, then the constitution possesses flexibility as an inherent virtue. This is true of the Constitution of the United States. If, on the other hand, a constitution is cluttered up with restrictive details, as are the constitutions of some individual American states, there is no way of adjusting the document to new governmental needs except by amending its provisions. On the face of things the constitution of California is harder to change than that of Great Britain, but it is in fact more easy to change and it is changed more frequently. A conservative people, with a constitution couched in broad terms, will make relatively few changes in it over considerable periods of time.⁸ But if they persist in writing into their constitution such details as the pay of school-teachers, the regulation of horse-racing, and so on, there will be an annual procession of amendments, no matter how hard the process of amending may be—even though it necessitates bringing the whole people to the polls in order to get an amendment adopted.

The outstanding feature of the British constitution: the gap between theory and practice. Let it be repeated: the unique feature of the British constitution is not its unwritten character, for a considerable part of it is in writing. And it does not possess, in actual practice, a greater degree of flexibility

⁸ Just how difficult it may be to accomplish a formal constitutional change in England is illustrated by the history of the Parliament Act of 1911. See below, pp. 130-131.

than most of the written constitutions in the United States. The unique feature of the British constitution is its curious divergence between constitutional forms and the actualities of government. In other countries the constitutional provisions are measurably in tune with the facts. In Great Britain they are not. In the British constitution "nothing is what it seems to be, or seems to be what it is." There is a gap between constitutional theory and governmental practice such as exists in no other land.

The results of this gap. This hiatus deserves a word of explanation. In Great Britain, because of a traditional disinclination to change the outward symbolism, many institutions, forms, principles, theories, ceremonials, and phrases of government remain unchanged, although their practical importance has long since departed. Some of them have become the exact negation of what they are assumed to be. Functions are performed by one official, or body of officials, in the name of another. Powers which for centuries have not been exercised, and doubtless never will be, continue to be vested in established authorities. By the constitution things are assumed to be done in one way; the officials do them in another way. That is why English writers, in describing their government, devote half their chapters to picturing what it is supposed to be, and the other half to explaining that it is in reality something quite different.

New substances dimmed by old shadows. England began her political history as an absolute, or nearly absolute, monarchy. But the United Kingdom has become, in the fullness of time, a limited monarchy, a crowned republic. Nevertheless the language of absolute monarchy has never been shaken out of the constitution, and the crown is still the reputed source of all authority. In legal form all actions of the government are actions of the crown, exercised in the name of the crown. All officers of government are the servants of the crown, summoned and dismissed at the royal discretion. No statute is valid without the crown's assent; no appointment is ever made (not even that of the prime minister himself) save in the name of the crown. No parliamentary election can be held save in obedience to the king's writ. It is the Royal Navy, His Majesty's Judges, His Majesty's Government, and even His Majesty's "loyal Opposition" in parliament.⁹

The royal prerogatives as an illustration. This is because the ancient prerogatives of the crown in assenting to laws, in making appointments, and in dispensing justice have never been taken away by any formal change in the constitution or the laws. But every Englishman knows that these high-sounding royal prerogatives have been so curtailed and circumscribed by usage and tradition that today they have little or no actual significance at all. All political power

⁹ Here and following, such references become Her Majesty's judges, Her Majesty's Government, etc. when the monarch is a queen regnant as at present. Also other phrases or sentences referring to the queen are substituted for similar references to the king.

has been shifted from the king to the people acting through their chosen representatives in parliament. The phraseology of royal absolutism remains, even though the last vestiges of it have gone from the practice of British government.

A difficult constitution to portray in print. The essential and peculiar characteristic of the British monarchy, therefore, is that the king retains the symbolism of absolute power although he has completely lost the substance of it. As a consequence of this, both laws and usage, forms and substance are widely at variance throughout the whole structure of British constitutionalism. This makes the government a hard one to describe. One is tempted to set forth the law, explaining that it is not the practice. Then, on second thought, it seems easier to set forth the practice, explaining that it is not the law. No wonder the impatient Tocqueville shrugged his shoulders and said: "In England, the constitution . . . there is no such thing!"

General Works. The general subject dealt with in this chapter has been discussed by many writers on English constitutional history and government. The best short surveys may be found in F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), pp. 57-81; A. L. Lowell, *Government of England* (2 vols., New York, 1908), Vol. I, pp. 1-15; Sir William R. Anson, *Law and Custom of the Constitution* (5th edition, Oxford, Vol. I, 1922, Vol. II, 1935); W. I. Jennings, *The British Constitution* (3rd edition, Cambridge, 1950), and *The Law and the Constitution* (3rd edition, London, 1943); and A. B. Keith, *The Constitution of England from Queen Victoria to George VI* (2 vols., London, 1940).

Special Discussions. Attention may also be called to W. I. Jennings and C. M. Young, *Constitutional Laws of the British Empire* (London, 1938); H. R. G. Greaves, *The British Constitution* (New York, 1938); D. G. E. Hall, *Brief Survey of English Constitutional History* (London, 1939); F. C. S. Wade and G. Godfrey Phillips, *Constitutional Law* (3rd edition, London, 1946); and the seventh edition of Edward W. Ridges, *Constitutional Law of England*, revised by A. B. Keith (London, 1939); Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution* (Minneapolis, 1948).

A. B. Keith, *Governments of the British Empire* (New York, 1935), explains the relation of the British constitution to the empire as a whole. An outstanding book with which every student of English government ought to be familiar is A. V. Dicey, *Law of the Constitution* (9th edition, London, 1939), and an interesting comparison between United States and British constitutional law and practice may be found in Harold Stannard, *The Two Constitutions* (New York, 1949).

Documents and Selected Cases. The great constitutional landmarks, such as Magna Carta and the Petition of Right, are printed in G. B. Adams and H. M. Stephens, *Select Documents of English Constitutional History* (New York, 1920), and in Carl Stephenson and F. G. Marcham, *Sources of English Constitutional History: A Selection of Documents from A.D. 600 to the Present* (New York, 1937), which may be supplemented by E. M. Violette, *English Constitutional Documents since 1832* (New York, 1936), and R. K. Gooch, *Source Book on the Government of England* (New York, 1939). A collection of adjudicated cases may

be found in D. L. Keir and F. H. Lawson, *Cases in Constitutional Law* (3rd edition revised, Oxford, 1948); David C. Douglas and George W. Greenaway, *English Historical Documents* (New York, 1953), Vol. II, pp. 1042-1189.

The books mentioned at the close of the next chapter also shed light, directly or indirectly, upon the nature of the English constitution.

It may be noted that the British government maintains British Information Centers in New York, Washington, D.C., Chicago, and San Francisco. Many free pamphlets on British and Commonwealth governmental affairs are available at these offices. They also maintain excellent, up-to-date reference libraries which can be used to advantage by students of British government. Mention should also be made of T. Besterman (editor), *British Sources of Reference and Information* (London, 1948).

CHAPTER III

How the Constitution Developed

The English parliament strikes its roots so deep into the past that scarcely a single feature of its proceedings can be made intelligible without reference to history.—Sir Courtenay Ilbert

The character of British institutional growth. "It has been a leading characteristic of English constitutional history," said Woodrow Wilson, "that her political institutions have been incessantly in process of development, a singular continuity marking the whole of the transition from her most ancient to her present forms of government."¹ All the way through it has been a history of quiet change, slow modification, and almost unconscious development. Great changes in its spirit have occurred from century to century; but they have been brought about so gradually that the process of alteration has hardly been perceptible. One cannot assign definite dates for the various stages as in the United States. It must suffice to say that the transition took place during a certain century, or, sometimes, in the course of a designated reign. Hence the reader of this chapter will not be asked to remember a lot of historical dates, for in no other country are exact dates so little worth remembering.

The British islands. The island of Great Britain, which includes England, Wales, and Scotland, has an area of about 88,000 square miles. It is comparable in size with Minnesota. Its present population is about 45,000,000. A little to the westward lies Ireland, with an area of about 30,000 square miles (considerably less than that of Cuba) and a population of only 4,500,000. In addition there are the Channel Islands, the Isle of Man, the Hebrides (part of Scotland), and various other small islands. The only expression that is commonly used to include all these areas is "the British Isles." To avoid any confusion in the reader's mind it should also be pointed out that the term "Great Britain" does not include any part of Ireland but that the "United Kingdom" includes Northern Ireland. When Great Britain first appeared on the horizon of re-

¹ *The State* (New York, 1918), p. 183.

corded history it was inhabited by Celtic tribes, from the mainland of Europe who had crossed the Channel several centuries before the dawn of the Christian era. Julius Caesar crossed from Gaul to Britain with an army in 54 B.C., but did not attempt a permanent occupation of the country. It was not until nearly a century later that the Emperor Claudius undertook the actual conquest of Britain and succeeded in establishing a Roman province there.

The Roman conquest and withdrawal. The Romans occupied the main island to a point well northward of the present Scottish border and westward to the mountains of Wales. They did not conquer Ireland. Their occupation of England continued for nearly 400 years during which time they built great highways, established towns, and developed a considerable trade. But they did not colonize the country with Roman settlers, and when they withdrew in the early part of the fifth century their political institutions soon disappeared.

The coming of the Anglo-Saxons. Not long after the Roman withdrawal, various marauding tribes from across the North Sea—Danes, Angles, and Saxons—descended upon the British coast and effected a series of landings. They arrived in large numbers, drove the people westward, and occupied the greater part of England. Settling on the evacuated lands, these various Anglo-Saxon tribes eventually established seven districts or “kingdoms”—East Anglia, Mercia, Northumbria, Kent, Sussex, Essex, and Wessex, each with its own chief or leader. Then followed a period of intertribal war in which the more powerful absorbed the weaker, until the heptarchy was reduced to three kingdoms and ultimately to two. Finally, the kingdom of Wessex gained supremacy in the ninth century and the English nation was formed.

SAXON ENGLAND

The government of Saxon England: the king. Thus *princeps* became *rex*. The amalgamated little kingdoms did not wholly lose their identity, but became shires of the Saxon realm, with an earl or ealdorman at the head of each. At best, England before the Norman conquest was a loose aggregation of tribal commonwealths divided by the jealousies of these great earls.² The supremacy of the Saxon king was rather tenuous; his powers depended in large measure upon his own personal sagacity and vigor. His kingship was hereditary in the sense that it descended in the same family, but there was a body of magnates, the Witan, which apparently had power to choose an heir other than the eldest son or even outside the ruling family if necessity arose. The Saxon king was the leader of his people in war; he made laws or “dooms” with the concurrence of his Witan, and he tried to see that these decrees were enforced.

² Cf. C. W. C. Oman, *England before the Norman Conquest* (London, 1910).

The Witan. The Witan (Witenagemot), or assembly of wise men, was the king's great council. Its exact organization and powers we do not know, but it had a variety of functions, including the right to be consulted by the king on important matters. Only when a weak king was on the throne did it count for much as a governing body. Although it had no fixed membership it customarily included the chief officers of the royal household, the bishops and abbots, the ealdormen of the shires, and the other magnates of the country.³ There were no elective members, and save for those whose great prominence made it impracticable to leave them out, the king summoned whom he pleased; hence the Witan varied in size from time to time. There was no national capital; the Witan met periodically in different parts of England. The king presided at its meetings and directed its business. In theory, at least, the powers of the Witan seem to have included the assenting to new legal usages, the making of treaties and alliances, the approval of taxes or levies, and the regulation of ecclesiastical affairs. At times it also acted as a high court for the trial of persons accused of treason or other high crimes.

The Witan as a check on the king. Since the Witan contained no elective members it was not a representative body, but it was nevertheless looked upon as reflecting the national will and as a potential check upon the arbitrary power of the king. Not as a very dependable check, however, for the king could fill the Witan with his own supporters and thus make sure that it would do his bidding. Still, it formed a link between the king and his realm; its meetings took him around the country where he could see or hear about what was going on; and it promoted the idea that the king should act "in council," not in obedience to his own caprice.

Saxon local government: 1. The township and the hundred. During the Saxon period the great mass of the people dwelt in little villages and made their living from the land. Each village, with the land belonging to it, formed a township, which was the smallest unit of English social, political, and economic life. Each township had its own local government, which usually consisted of a township "mote" or town meeting and certain elective officers, among whom was a reeve. Groups of townships were formed into hundreds, or districts which seem to have contained a hundred warriors or a hundred heads of families. Each hundred, likewise, had a local assembly which appears to have been made up of the reeve "and four good men" from each township.

2. The shire. Finally, there was the shire with its shire-mote, which became the progenitor of the modern county and its county court. There is some reason for believing that in its earlier stages this shire-mote or court was a

³ In the Witan held at Winchester in 934, for example, there were present two archbishops, four Welsh "kings," seventeen bishops, four abbots, twelve ealdormen, and fifty-two royal thanes. F. W. Maitland, *Constitutional History of England* (Cambridge, England, 1908), p. 56.

popular assembly of all the free men who cared to attend, but in time it came to be made up of the larger landowners and the officials of the church, together with the reeves and the other representatives of the townships. It met twice a year, usually under the leadership of an ealdorman who was appointed by the king. There was also a shire reeve or sheriff, similarly appointed, and in the course of time this official displaced the ealdorman as the presiding officer of the shire assembly. The shire-mote was a court rather than a council; its main function was to hear and determine important controversies, especially those relating to the ownership of land.⁴

Significance of the local democracy. There are three significant things about this Saxon system of local government. First, it was measurably uniform throughout the whole kingdom, thus creating a bond of national unity. Second, it marked the beginnings of the modern Anglo-American system of local self-government. It was in the township and the shire (or county) that people obtained their first lessons in the art of governing themselves. Finally, and perhaps most significant of all, is the fact that these early local governments were based, in theory at least, upon the principle of representation. It was in them that the idea of choosing representatives first gained a foothold. Men were chosen by their fellow freemen to sit in the court of the shire long before there were any elections to parliament. So, when representation in parliament came, the people were ready for it. There has been no time during the past thousand years when Englishmen have not been electing somebody to represent them somewhere—in township, shire, borough, parish, county, or parliament.

The Norman conquest. The Saxon monarchy did not gain strength with the lapse of time. Its weakness provided an opportunity for the invasion of England by Danish tribes which overran a considerable part of the country and installed a line of Danish kings. After a season of disorder, bloodshed, and extortion, the Saxon dynasty was restored, but only for a brief interlude. The Norman conquest was at hand. In 1066 William of Normandy laid claim to the English throne and supported his claim by bringing an army across the Channel. After defeating his rival claimant in a decisive clash at Senlac (a few miles from Hastings in Sussex), William proceeded to Westminster where he was crowned on Christmas Day.

NORMAN ENGLAND

Constitutional effects of the Norman conquest. The coming of the Normans inaugurated a second and very important epoch in the evolution of the British constitution. But the Norman conquest is to be looked upon as a turn-

⁴W. A. Morris, *The Early English County Court* (Berkeley, California, 1926), and *The Mediaeval Sheriff* (Manchester, 1927).

ing-point rather than as a starting-point in the development of representative institutions. The Norman conquerors did not root out the existing system of local government but merely modified it and superimposed some of their own institutions upon it. William desired to rule as king of the English; he wanted the good will of the people; hence he permitted the people to retain their ancient laws, institutions, and customs. He changed things only insofar as seemed necessary to ensure the strength of his own royal power and to establish a centralized rulership over his new kingdom. Thus there took place a fusion of Saxon and Norman political ideals, with lasting advantage to the English nation. The old Saxon government was strong in the local areas but weak in the nation as a whole; the Norman government of England became strong in both.

The increased authority of the crown. First among the significant developments of the Norman period was the increased power of the crown. The Saxon monarchy had been weak because local independence was strong. William set out to make himself every inch a king, and by a variety of measures he succeeded. He curbed the power of the Saxon earls by breaking up their great estates and dividing them among his own trusted followers to be held under feudal tenure as his vassals. He made himself head of the church and assumed the right to appoint the bishops. Most important of all, William and his successors drew the system of local government under their control by increasing the powers of the shire reeves or sheriffs. These sheriffs, who were appointed by the king and responsible to him alone, became the real rulers of the shires (or counties, as the Normans preferred to call them). They enforced the king's will in all parts of the realm, maintained law and order, collected the taxes and turned them into the royal treasury. The *calldorman*, or earl, disappeared from the Norman county court.⁵ Finally, under William's successors the crown increased its authority by developing a system of royal judges who went about from county to county hearing cases, deciding them in accordance with the same principles, and thus making the king's law "common" throughout the realm.

Significance of the growth in royal power. The significance of all this royal centralization proved to be far-reaching. It may sound like a paradox, but it is nonetheless true that the growth of the royal power under the Normans and their successors paved the way for the ultimate triumph of English democracy. Representative government did not achieve its first victories in England because the barons and lords were strong but because they were weak. Restraints upon the king's authority in England could not be imposed by individual dukes and counts as in France, for there were none powerful enough.

⁵ The title "earl," however, has survived as one of the ranks in the British nobility.

The curbing of the king, when the time came, had to be a joint enterprise, participated in by all. In other words the noblemen and lesser landowners of England were compelled to pool their strength against the monarchy, and they seized upon the Great Council or parliament as the agency through which this might be effected. Then, needing allies, they took the people of the towns into camp, and parliament became more broadly representative. The movement was aided, as will be shown a little later, by the fact that the king needed money and had to give representation to the towns in order to get it.

The Witan becomes the Great Council. Under the Normans the old Witan became known as the Great Council. Like the Saxon Witan it was composed of royal officials, church dignitaries, and other high personages summoned by the king; no elective members were included. At its sessions, which took place three times a year in William's reign, there were present "all the men of England," as the chronicler puts it, by which he meant all the men who amounted to much. The Great Council met in different parts of the country—at Westminster, at Winchester, or at Gloucester, wherever the king happened to be—but eventually all its sessions were held at Westminster. It supposedly had the same general functions as the old Witan, but its actual power was less because the king's authority had become greater and because all its members were now the king's vassals. The king consulted it in the making of laws and the levying of new taxes. But most of the royal revenue came from feudal dues, and for the collection of these the king needed nobody's approval. The Norman king was the largest private landowner and the richest man in the realm; his income was large enough to defray most of the national expenditures without recourse to any regular system of taxation.

A new cog in the political mechanism: the Curia Regis. Then there was the Curia Regis or Little Council. It is sometimes said that this was a different body from the Great Council, and sometimes that the two were the same. They were in fact the same and yet not the same. The contradiction may be explained in this way: The Great Council met only at intervals, three times a year at the most. But certain of its members, notably the officers of the royal household (such as the chancellor, the chamberlain, the constable, and the steward) were permanently with the king, traveling with him wherever he went. This small body of officials and barons, in permanent attendance on the king, could be used at any time as a sort of executive council or court, and to these gatherings the name Curia Regis was applied. The king's wishes, the business in hand, the convenience of the barons—various things determined whether the big council or the little council should be consulted. In other words there were both plenary and restricted sessions of the same body, with no hard and fast line between the two in point of membership or jurisdiction. It is probable

that sessions of the Great Council were devoted chiefly to larger questions of justice, finance, and public policy, while meetings of the Curia were chiefly concerned with administrative and routine matters, but even of this we cannot be sure. There was a serene disregard for definiteness in mediaeval institutions.

Summary. The essential thing to be borne in mind is that the Norman kings governed England with the help of a single nonelective body which met either in formal session with a fairly large membership or informally with a smaller attendance. We do not know the extent to which the king felt himself bound to seek or be governed by its advice in either case. The Norman monarch judged and taxed, levied feudal dues on his vassals and commanded his army, declared the customs of the kingdom and changed them by royal command. He was absolute in theory and little short of it in fact. Nevertheless he did call the leaders of his people together, sought their advice, and sometimes followed it. This habit, under later kings who were not so strong, hardened into a usage which eventually became a constitutional principle. Out of the plenary sessions of the Great Council the British parliament arose; out of the Curia grew the privy council (and the cabinet), the exchequer (the treasury), and the high courts of justice. So the frame of government in twentieth-century England owes much to this ancient council with its big and little sessions.

PLANTAGENET ENGLAND

The work of Henry II (1154-1189). The Norman political system was rough at the edges. But most of the crudities were polished off by Henry II, the Conqueror's great-grandson. Henry restored, revived, extended, and defined the organs of English government. A man of legal temperament, adroit and energetic, he infused new life into the administrative and judicial systems. He elaborated the plan of sending royal judges on circuit through the counties; appointed more competent sheriffs, brought the jury system into general use, and inaugurated a distinction between the administrative and the judicial functions of the Curia Regis. By holding more frequent sessions of the Great Council and by referring all important matters to it for deliberation he assured it a definite place as the forerunner of parliament.

The beginnings of a separation between executive and judicial work. Mention has been made of the fact that the Curia Regis originally concerned itself with both administrative and judicial matters, making no distinction between these two fields of jurisdiction. But in due course it found that work could be expedited and improved by devoting separate sessions to different kinds of business—to the work of examining the sheriffs' accounts and to hearing appeals from the county courts, for example. Gradually, at any rate, there took place a separation between the administrative and the judicial work of

the Curia, and with this came a bifurcation of its membership. One section continued as a permanent royal council, later known as the privy council. The other, confining itself to judicial business, became the parent of the exchequer and the high courts of justice. It is not to be imagined, however, that this separation took place all at once, or that it can be assigned to any single reign.⁶ It came about gradually, by halting steps, and without conscious intent, thus affording us an admirable illustration of the principle of evolution as applied to political institutions.

The evolution of parliament. Meanwhile a development was taking place in the legislative branch of the government, although one should hasten to explain that no clear distinction between executive and legislative functions was in the mind of the king, the council, or anyone else at this early stage. The king stood in the public imagination as the chief lawgiver of the realm, and the sanction of all law. Nevertheless a separation between legislative and executive work, between lawmaking and administration, became inevitable as the Great Council grew larger in its membership and as its work became more extensive.

The first enlargement (1213). This enlargement of the council came with the admission of the lesser landowners, the knights of the shire as they were called. Only the great baronial landowners had previously been summoned to the meetings as tenants-in-chief who held their lands directly from the king. But King John, in 1213, directed the sheriffs to send "four good knights" from every county to attend a session of the Great Council at Oxford. This and subsequent invitations of the same sort were not dictated by any new philosophy of popular representation but by altogether mercenary motives. The king wanted revenue; he desired to levy taxes upon all landed estates of whatever size; and it seemed advisable (for it simplified the work of the royal tax-gatherers) that the new taxes should be approved by a widely representative gathering.

The power to tax. Here we encounter, accordingly, the germ of the doctrine that there should be "no taxation without representation." It was not conjured from the brain of Aristotle or any other political philosopher. John Plantagenet, king of England, simply found it easier to tax with representation than without it, and it was his habit to choose the path of least resistance. But he builded better than he knew. He set in motion an idea that reverberated across the Atlantic five centuries after he had passed to his grave.

What representation meant in the thirteenth century. Under the circumstances it is easy to realize that a summons to attend the Great Council

⁶ The separation began early in the twelfth century and was not completed until the middle of the fourteenth. Full details are given in J. F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), Chap. iii.

was by no means looked upon as an honor in the thirteenth century; on the contrary it was regarded by great and small landowners alike as something to be evaded if possible. A contemporary chronicler tells us how one gallant cavalier, when his assembled fellow knights sought to choose him as their representative, put spurs to his horse and tore off at full speed lest acceptance be wrung from him. A knight of the shire, when chosen by his fellows in response to the royal summons, had to travel to Westminster at his own expense, and travel was difficult in those days. From the outlying parts of the kingdom the journey was a matter of weeks. There was neither honor nor emolument in the job. And when the knights arrived at the meeting place they were merely told by the king to approve some new taxes. Then they were sent home again. Nothing could be further from the truth than to imagine that the people of mediaeval England, any of the people, clamored for representation in the Great Council.

Magna Carta (1215). Then came the Magna Carta, the Great Charter of 1215. This document, by some of its provisions, gave increased definiteness to the organization of the Great Council. It stipulated that the king must not act in certain matters without the council's consent. It provided that all the great barons should be summoned individually, and all the knights of the shire by writs addressed to the sheriffs. But this charter was strongly baronial in tone and did not require that membership in the Great Council should be made representative of the people. It assured no representation to the towns. Although schoolboy orators throughout the English-speaking world perennially acclaim Magna Carta as "the foundation of modern democracy," it was in fact a treaty between the king and the barons of England in which the latter got all they could for themselves and very little for anyone else. Most of its provisions relate to the privileges of the church and the landowners; only a very few have any relation to the rights of the common man. The idea that this charter forms the basis for freedom of worship, freedom of speech, and the right to vote is one of our most tenacious political myths.

The layman's idea of this document. There is a well-known picture which is sometimes hung on the walls of American schoolrooms. It portrays King John, with a worried look, a crown on his head, and a quill pen in his hand, affixing his signature to a long scroll which is supposed to contain the provisions of the Great Charter. Behind him is pitched a tent of nineteenth-century design, over which is unfurled a royal flag that did not come into use until long after John had been gathered to his fathers. All this is amusingly fantastic, for the reason (among others) that John Plantagenet was absolutely illiterate and could not write a single word, not even his own name. Magna Carta was not signed by the king; it was merely assented to by him orally,

and sealed with the Great Seal of the Realm together with the individual seals of twenty-five barons who were designated to see that the provisions of the charter were respected. Four documents, each of which professes to be the original, have come down to us. Each differs somewhat in phraseology from the others.⁷

Why it is a great landmark of civil liberty. Yet Magna Carta is properly regarded as a landmark in English constitutional history. It was more than a piece of class legislation wrung from a frightened king by a group of baronial conspirators. For it definitely established the principle that the king, on certain great issues, must consult his council as a matter of law and not as a matter of choice. In other words, it was a recital of what the barons of England looked upon as the constitutional customs of the realm. With this interpretation the people seemed to agree. At any rate none of them flocked to the support of the king. They left him to stand alone. So, while the provisions of the Great Charter guaranteed rights to bishops, barons, and merchants rather than to the populace, a further extension was bound to follow. In its resounding Latin, moreover, the charter endowed Englishmen with one right which they have never let go, and which their posterity beyond the seas have guarded with unremitting vigilance—

Nullus liber homo capiatur, vel imprisonetur, aut dissaisiatur, aut autlagetur, aut exultur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terrae.⁸ (*Article 39*)

Simon de Montfort's Great Council (1265). But let us get back to the evolution of parliament. The charter of 1215, as has been said, did not require that the Great Council should be placed upon a representative basis, but it was not long before this principle gained acceptance. The advance is commonly associated with the name of Simon de Montfort, Earl of Leicester, who is sometimes called the "Father of the House of Commons," although he has no good claim to this attribute of paternity. What happened, in short, was this: During the reign of Henry III, about fifty years after the signing of the charter, a quarrel between the king and his barons arose over the royal attempt to impose some new taxes; and both sides resorted to arms. The king was defeated, and Simon de Montfort, as leader of the barons, became virtual dictator of the realm, although the king was not formally deposed. But a dictator could no more govern without funds than could a king, so Montfort had to solve the problem of finding a Great Council which would approve a tax levy. In 1265,

⁷ A good book on the subject is W. S. McKechnie's *Magna Carta: A Commentary on the Great Charter of King John* (Glasgow, 1905).

⁸ "No free man shall be arrested, or imprisoned, or dispossessed of his land, or outlawed, or exiled, or in any other way harassed, nor will we impose upon him, nor send him our commands, save by the lawful judgment of his peers or by the law of the land."

therefore, he took the step of summoning not only the bishops, barons, and knights of the shire, but two representatives from each of twenty-one boroughs or towns which were known to be friendly.

Montfort's motives. Montfort was an adventurer, shifty and self-seeking. His action in extending the basis of representation in the Great Council (or parliament, as it was now beginning to be called) was not inspired by any belief in popular government.⁹ He needed money. His hold on the barons was weakening. The towns were growing in population and wealth. He wanted their support—and their financial contributions. Hence his desire to draw them into the orbit of national taxation. But he also had the instincts of a modern political boss and restricted his summons to those towns which he believed were favorable to him.

The Model Parliament (1295). So Montfort's parliament in 1265, with its earls, barons, bishops, knights, and townsmen, was not a national parliament but rather a party convention—a packed convention at that. And when Montfort was ousted from his dictatorship a little later, the practice of summoning representatives from the towns or boroughs was discontinued. Sessions of parliament were held from time to time during the next thirty years—usually with no borough representatives present. Then, in 1295, Edward I regularly summoned them once more. He was waging a war and needed money from all elements, the church, the barons, the knights, and the towns. Hence Edward brought together what has come to be known in English history as the Model Parliament. It was a large body, a parliament in the true sense.¹⁰ It met as a single chamber but voted its taxes by three divisions or “estates”; in other words, the clergy, the barons and the knights, and the townsmen each voted separately. Each group was called into the presence of the king. There they listened to his plea for money and gave assent—by their silence. They did not sit; being in the presence of the king, they stood. The session did not last long, just long enough to unloose the purse strings.

The “three estates” in parliament. In several subsequent parliaments the “three estates” met and voted separately, but this three-chamber arrangement never became a fixed parliamentary practice. Instead there took place a coalescence which eventually made parliament a bicameral body. The higher clergy and the great barons drew together, for they had interests in common.

⁹ The term “parliament” was vaguely and loosely used until 1295 or even later. Matthew of Paris speaks of a *magnum parlamentum* in 1257 (*Stubbs, Select Charters* [Oxford, 1900], pp. 330-331) and the Annals of Winchester refer to a *parlamentum omnium magnatum* in 1270 (*ibid.*, p. 337). The Rolls of Parliament begin with the year 1278, but they do not cover all the meetings until the end of the century.

¹⁰ It included two archbishops, eighteen bishops, sixty-six abbots, three heads of religious orders, nine earls, forty-one barons, sixty-one knights of the shire, and one hundred and seventy-two representatives from the towns. For a full account of it see D. Pasquet, *An Essay on the Origins of the House of Commons* (Cambridge, 1925).

Both were large landowners; both were summoned to parliament by individual writs and hence were members of it by tenure, not by election. On the other hand, a similar identity of interest drew together the knights of the shire and the townsmen, for both were present in a representative capacity. Meanwhile the lower clergy dropped out of parliament altogether, preferring to tax themselves in their own convocations of Canterbury and York.

Separation of the two houses. Thus was accomplished the molding of parliament into two chambers, which came to be known as the House of Lords and the House of Commons. The process of bifurcation moved slowly and was not entirely completed for at least 100 years after 1295. It was an important step, one of the most significant in the entire history of government, for it started the bicameral system on its way around the world. No one planned or guided this separation and coalescence; it was merely the natural working out of the social forces of the age. Regarded as of little or no consequence in the earlier centuries, this division of the English parliament into two chambers gave it a frame that has been transmitted to every other great legislative body on earth.¹¹

The methods by which knights and burgesses were elected. It has been said that the knights and the townsmen were present as representatives; but how and by whom were they elected? The knights of the shire were chosen in the county court, which was in effect a county council. Any landowner, whether he had attained the rank of knighthood or not, was eligible. The burgesses or representatives from the boroughs were chosen by the freemen of these towns at meetings called for the purpose. As a matter of practice the elections were decided by a relatively few landowners in each shire and by the leading citizens of each parliamentary borough. Voting was by a show of hands and rarely was there a contest. More often it was a matter of persuading someone to accept.

What they did after they were elected. Being a member of the House of Commons in mediaeval England brought neither profit nor honor nor authority. The commoners were regarded as of no account, save for their assent to the granting of funds. In the great hall at Westminster, where parliament assembled, the bishops and barons sat in front of a throne which the king occupied, his chancellor and other officials flanking him on either side. Below and beyond the bar of the house, at the opposite end from the throne, stood the knights of the shire and the burgesses. Their presence was not essential to a quorum. The king, through his chancellor, presented the immediate business in hand, whereupon the commoners retired to the refectory of the building

¹¹ We are accustomed to think of the two-chamber system as having been universal from the outset. But the Scottish parliamentary system included only one legislative chamber; the French developed three estates; and in Sweden the early parliaments had four houses.

and "debated" the matter. Having chosen a spokesman or "speaker" they trooped back into the hall, and this speaker, with profuse expressions of loyalty, announced the result of their deliberations. That was the extent of their share in the work of parliament.

The earliest powers of parliament: 1. To vote taxes. One should not make the error of thinking that parliament in the fourteenth century was primarily a lawmaking body. The king made the laws with the assent of the lords, spiritual and temporal. The commoners merely presented petitions and assented to the levy of taxes. The bishops and barons far outweighed them in influence. But the commoners gradually began to gain authority. They acquired, in due course, the right to be *first* considered in money matters. Their possession of this financial initiative was shown in 1407 when the king agreed that all grants of taxes should be first made by the commoners and then assented to by the lords.

2. To present petitions. The right of presenting petitions likewise became the basis of an actual share in the making of laws. For it naturally happened that many individual petitions related to the same grievance. In such cases it became the custom to merge them into a common petition, a collective petition presented by the house as a whole. Such a petition came to be known as an "address to the throne," that is, a united request for royal action.

3. To share in making the laws. In the fourteenth century the king made the laws with the *assent* of the lords, at the *request* of the commons; in the fifteenth century he found himself making them "by and with the advice" of both. It was in this way, slowly and almost imperceptibly, that the commoners acquired an actual share in the making of the laws.¹² During the Wars of the Roses, which covered a considerable portion of the fifteenth century, the commoners gained on the lords because the latter devoted so much of their attention to quarreling among themselves. These wars were chiefly waged by noblemen and their retainers; the towns took little part in the struggle. Before they were over, the majority of the barons had been killed off and their titles extinguished. New noblemen were created, of course, but they did not have the prestige of the older families.

TUDOR AND STUART ENGLAND

England's government at the beginning of the modern epoch. Even so, the House of Commons was not a powerful body even in the days of Henry

¹² Wallace Notestein, *The Winning of Initiative by the House of Commons* (London, 1926). See also S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (New York, 1936), and Howard L. Gray, *The Influence of the Commons on Early Legislation* (Cambridge, Mass., 1932). See also G. L. Haskins, *The Growth of English Representative Government* (Philadelphia, 1948), and A. F. Pollard, *The Evolution of Parliament* (London, 1920).

VIII and Elizabeth—that is, in the sixteenth century. The crown remained the pivotal point in the government. When the commoners showed themselves obstinate, the monarch did not disdain to use threats and coercion. Henry VIII, for example, warned them on one occasion that unless certain measures were passed, he would send a batch of commoners to the gallows. Queen Elizabeth sent two members of the Commons to prison for their persistence in advocating legislative proposals which were distasteful to her. The House contained at this time about 300 members elected by the freeholders in the counties and the freemen of the towns.¹³ Elections were held irregularly, for there was no requirement by law or custom that they should be held on stated dates. When the king wanted money he called an election. Then, if the House of Commons proved complaisant, he continued it in existence for several years; otherwise he dissolved it speedily. Sessions were brief; they usually lasted only a few days or at most a few weeks. In the reign of Henry VIII, nine parliaments were elected. One sat for seven years; two sat for three years each; the other six were quickly dissolved. Queen Elizabeth summoned parliament more regularly and (outwardly at least) accepted its action on many important matters.

The crown and parliament under the Stuarts. Soon after the death of Elizabeth, however, this waxing strength of parliamentary government was put to a severe test. Leaving no nearer relatives, Elizabeth passed the English throne to her cousin, James VI of Scotland, who in 1603 was crowned king of England as James I. Retaining the throne of Scotland, he claimed to rule in both countries by divine right and laid great stress upon his royal prerogatives. This insistence soon precipitated a conflict with the House of Commons, but matters did not come to an open rupture, for the king was careful not to press his doctrines too far. When James could not get laws, he resorted to ordinances.¹⁴

The open breach. His son and successor, Charles I, was neither so cautious nor so fortunate, and in 1628 both Houses united in presenting to him the famous Petition of Right which definitely asserted various parliamentary privileges to which the king, under pressure, assented; but he did not keep his word. Then for eleven years Charles I ruled the kingdom without calling a parliament at all. At the close of this interval, when he called a new parliament, it proved no more amenable than its predecessors. It adopted the Grand

¹³ A freeholder was one who owned land with an estimated rental value of forty shillings per annum or more. A freeman was anyone who possessed the "freedom of the town." Originally a considerable percentage of the adult male residents were freemen, but as time went on the category was narrowed. For a full account of the English political system at this stage of its development see K. Pickthorne, *Early Tudor Government* (2 vols., New York, 1934).

¹⁴ Laws were enacted by the king-in-parliament; ordinances were issued by the king alone. It is significant that in the King James version of the English Bible (*Exodus* xviii: 20) the translators wrote, "And thou shalt teach them ordinances and laws." They placed ordinances first.

Remonstrance of 1641 which was in effect an appeal to the people against the king.¹⁵

The great rebellion and the commonwealth. In the early stages of the rebellion the king's forces had the advantage, but Oliver Cromwell, leader of the parliamentary forces, succeeded in gaining the upper hand. Eventually the king was put on trial, condemned, and executed (1649). Thereupon governmental changes came in quick succession; the monarchy and the House of Lords were abolished; a commonwealth or republic was proclaimed; a written constitution known as the Instrument of Government was adopted, and Cromwell was named Lord Protector. But he, no less than his royal predecessor, found the House of Commons a difficult body to deal with and his new constitution failed to take root.¹⁶ It became increasingly unpopular with the people and was only maintained in operation by the personal force of Cromwell himself. The Lord Protector died in 1658 and within a short time the monarchy was restored.

The Stuart restoration (1660) and the abdication of James II (1688). The restoration of the Stuart dynasty under Charles II indicated the strength which the monarchical tradition had acquired in Britain. It was assumed that Charles II, the new king, would accept the principle of parliamentary supremacy, and in general he did so. During the twenty-five years of his reign he had several conflicts with parliament but never risked his throne. His brother, James II, who succeeded him in 1685, was headstrong and intolerant, with narrow views and no imagination. Moreover, he was unfortunate in the choice of his advisers, and made himself trouble by endeavoring to restore the Roman Catholic religion in England. Within a short time after his accession he quarreled with parliament over the right to exercise his "dispensing power," as it was called, that is, the right to suspend the operation of certain laws; and this drove the parliamentary leaders to the plan of bringing in a new monarch. William, Prince of Orange, was therefore invited to aid in "protecting the constitutional liberties of the realm" and the result was the "Glorious" Revolution of 1688. Finding himself deserted by all parties, James fled to France and the Stuart monarchy came to an end.

Development of the privy council; the cabal of 1677. While this struggle between crown and parliament was going on there took place a change in the king's council, now officially known as the privy council. It became a large body, including at one stage as many as forty members. Its functions

¹⁵ A good survey of these controversies is given in J. R. Tanner, *The Constitutional Conflicts of the Seventeenth Century* (Cambridge, 1928).

¹⁶ In 1656, when the House endeavored to assert its right to control the militia, Cromwell appeared on the floor, gave the members a scathing rebuke, dissolved the House, and sent them home. And when a new parliament was elected he saw to it that no members opposed to him were admitted. Subsequently, however, these opponents were permitted to take their seats and trouble again resulted, with the same outcome—another dissolution.

were still called advisory, but they were in reality much more than that. Through its committees or boards, and by means of orders-in-council, it regulated trade, supervised the administration of justice, took control of finance, and left no department of the government outside its vigilant supervision. But with growth in size and in the scope of its work the privy council could no longer effectively perform its original function of advising the king. So Charles II adopted the plan of having a "cabal"¹⁷ or inner circle of privy councillors meet with him in his "cabinet" or private audience-room and advise him on important confidential matters. This action was much resented by the other councillors, and the practice was temporarily abandoned, but it was soon resumed and became the forerunner of the present-day cabinet system.

HANOVERIAN ENGLAND

The Bill of Rights (1689). As a result of the revolution, William and his wife Mary became joint monarchs of Great Britain in 1689.¹⁸ In order that there might be no recurrence of friction between the crown and parliament the latter drew up and adopted a document known as the Bill of Rights. This document, while it did not profess to be a constitution in the ordinary sense of the term, set forth the basic principles of English government as they were understood by parliament at the time. Enumerating the various issues which had arisen between the king and his people it proclaimed the legislative supremacy of parliament, reiterated a denial of the crown's right to levy any tax or impost without parliamentary consent, insisted that parliament should be regularly called, and set forth a list of individual liberties which were not to be infringed.

The Bill of Rights, accordingly, marks the culminating stage in the evolution of the fundamentals. The outlines of the British constitution were now practically complete; nothing remained but to fill in the details and to elaborate the machinery of administration. Britain had become a limited monarchy. Parliament had gained a mastery over the royal prerogative. It was in a position to control the ministers of the crown even though the principle of ministerial responsibility had not as yet become established in its present form. The changes that have taken place in the British government since 1689 have not altered its general outlines.

Constitutional changes since 1689. But although there has been no reconstruction of the framework, some notable changes have taken place in the practical workings of English government. The most significant among these are

¹⁷ The word is often said to have been formed by using the initial letters from the names of its first members—Clifford, Ashley, Buckingham, Arlington, and Lauderdale; but the term "cabal" was used in England at least a half century earlier to designate a small group engaged in intrigue.

¹⁸ Mary was the eldest daughter of the exiled James II.

(1) the continued narrowing of the monarch's actual powers, (2) the rise of the cabinet and the fixing of its responsibility to parliament, (3) the democratization of the House of Commons, (4) the reduction in the powers of the House of Lords, and (5) the growth of the party system.

1. The diminished powers of the monarch. Although the Bill of Rights asserted the legislative supremacy of parliament it did not deny to the crown the right to choose its own advisers. William and Mary chose their ministers without consulting parliament. But their successors, George I and George II, were Hanoverians by birth, with little or no interest in English affairs. They could not speak the English language, hence it was useless for them to attend meetings of their ministers. So they took care to choose advisers who would be acceptable to the House of Commons, and let the House control them. George III, when he came to the throne, made a brave attempt to revive some of the royal influence which his grandfather and great-grandfather had relinquished, but it was too late.¹⁹ Parliament had taken the reins and was determined to keep them.

2. The evolution of the cabinet. With the decline in the personal authority of the king came a rise in the power of his ministers. It is often said that the cabal of Charles II's reign was the progenitor of the present-day cabinet, and in a sense it was; but the real reason for the cabinet's rise to power was the necessity of providing a channel through which the newly asserted supremacy of parliament over the king could be exercised. It was soon discovered that things went along with much less friction when the members of the cabinet were chosen from among those members of the privy council who belonged to the dominant party (Whig or Tory) in the House of Commons. No statute or resolution of parliament forced the king to restrict his choice in this way: it was merely the logical thing to do. The monarch found it easy to avoid trouble by selecting a prime minister who could control a majority in the House of Commons. Sir Robert Walpole was the first royal adviser to whom the term "prime minister" can properly be applied. He held office at the will of parliament. When he resigned in 1742 because of an adverse vote in the House of Commons, he established a precedent which has become the most important of all the usages of the British constitution.

3. The democratization of the Commons. The democratization of English government is a third feature of the past two centuries. The House of Commons at the end of the eighteenth century was a representative body in form but a very unrepresentative body in fact. It did not reflect public opinion upon matters of national policy. This situation was due to the gradual narrowing of the parliamentary suffrage and to the fact that although the population

¹⁹ A. M. Davies, *The Influence of George III upon the Development of the Constitution* (Oxford, 1921).

was being greatly shifted by the rise of the factory system there had been no redistricting of the country for election purposes. The Reform Act of 1832 changed all this. It liberalized the suffrage and in some degree adjusted representation to population. It made the House of Commons a fairly representative body in fact as in name, thereby enhancing its strength and prestige. Other reform acts followed at intervals until universal suffrage was finally attained.

4. The reduction in the powers of the Lords. The fourth important change relates to the powers of the House of Lords. These have been curtailed. From time to time, especially during the closing decades of the nineteenth century, the Lords and Commons came into collision and the former were able to prevent the enactment of measures which the Commons had passed by large majorities. These conflicts engendered much political bitterness, but not until 1911 did a head-on collision occur. The immediate occasion was the action of the Lords in rejecting a finance bill or budget which the Commons was determined to place on the statute book. The Commons thereupon decided that never again should the hereditary chamber be in a position to balk its will, and the Parliament Act was put through both Houses. (The Lords assented to this measure under a threat that if they did not do so enough new peers would be created to pass the bill.) The Parliament Act definitely settled the ultimate supremacy of the Commons in all cases of disagreement.²⁰

5. Rise of the party system. Finally, the actual workings of British government have been greatly influenced, during the past two centuries, by the rise of political parties. We have now grown so accustomed to party organizations, party progress, and party activities that it is difficult to visualize a system of representative government without them. There were political "factions" in English history long before 1689—Lancastrians and Yorkists, Cavaliers and Roundheads; but they were not political parties in the modern sense. They did not concede that their opponents had any right to exist. To oppose those who happened to be in power was accounted disloyalty.

It was not until after 1689 that Englishmen reconciled themselves to the idea that men could be opposed to the existing government without being enemies of the state. Men could be "in opposition" without being rebels. Indeed, it slowly came to be realized that a strong opposition in parliament was a wholesome spur to efficient administration because it put the ministry on its mettle. So the nineteenth century witnessed a general acceptance of the party system with all its implications. The minority in parliament were no longer known as the king's enemies but as "His Majesty's loyal Opposition." The in-

²⁰ For details of this Act and subsequent legislation which further reduced the power of the House of Lords see below, pp. 130-132.

sertion of the term "loyal" in this phrase is of great significance. It points to what is perhaps the most significant change that has been wrought in the spirit of British politics during the past 200 years.²¹

Other constitutional developments during the past two centuries.

Now the foregoing are not the only changes that have come into the practice of British government since the days of George III and the American Revolution. Scotland entered into a parliamentary union with England in 1707. Ireland was drawn into this union in 1800, but all except Northern Ireland went out of it in 1922. So it is now the United Kingdom of Great Britain and Northern Ireland. Meanwhile a great overseas empire had been built up, but without any radical reconstruction of the government at home. The essentials of the British constitution have undergone no drastic overhauling by reason of this transformation from a small kingdom into a world commonwealth.

Constitutional Development. There is no end of material on the subject of the foregoing chapter. For the American student the most useful surveys are the *Constitutional History of England* by George Burton Adams (revised edition, New York, 1934); J. E. A. Jolliffe, *Constitutional History of Mediaeval England* (London, 1937); B. Wilkinson, *Constitutional History of Mediaeval England, 1216-1399* (New York, Vol. I, 1948, Vol. II, 1953); D. L. Keir, *Constitutional History of Modern Britain, 1485-1937* (London, 1938); and F. C. Montague, *Elements of English Constitutional History* (London, 1936). More extensive accounts are in the *Constitutional History of England*, published in five volumes under the editorship of R. F. Traherne, especially in Vol. IV. by M. A. Thompson, which covers the period 1642-1801 (London, 1938); F. W. Maitland, *Constitutional History of England* (Cambridge, 1908); and A. B. Keith, *The Constitution of England from Victoria to George VI* (2 vols., London, 1940); William A. Robson, *Justice and Administrative Law: A Study of the British Constitution* (3rd edition, London, 1951). Those who wish to delve more deeply into the subject will find further references, wisely chosen, in the *Guide to Historical Literature* (New York, 1931), pp. 528-540.

Charters and Great Statutes. The more important charters and allied documents may be found in William Stubbs, *Select Charters and Other Illustrations of English Constitutional History* (9th edition, Oxford, 1913), which covers the period to about 1300; E. C. Lodge and G. A. Thornton, *English Constitutional Documents, 1307-1485* (Cambridge, 1935); G. W. Prothero, *Select Statutes and Other Constitutional Documents* (4th edition, Oxford, 1913), covering the reigns of Elizabeth and James I; and S. R. Gardiner, *Constitutional Documents of the Puritan Revolution*, which deals with the period 1625-1660. C. G. Robertson, *Select Statutes, Cases and Documents to Illustrate English Constitutional History* (revised edition, London, 1913); W. C. Costin and J. S. Watson, *The Law and Working of the Constitution: Documents 1660-1914* (2 Vols., New York, 1952). See also p. 000.

Current History. A review of current political events is given in the *Annual Register* which has regularly appeared since 1759.

²¹ The expression "loyal Opposition," however, has now passed out of general use. Its loyalty is taken for granted. The Ministers of the Crown Act of 1937 simply refers to "the Opposition."

CHAPTER IV

The Crown

Lex facit regem: what power the king hath, he hath it by law; the bounds and limits of it are known.—Richard Hooker (1594)

The king and the crown. “Who rules England?” asked a Stuart satirist. “The king rules England, of course.” “But who rules the king?” “The duke.” “Who rules the duke?” “The devil.” Nowadays it is the crown, not the king, that does the governing, for the monarch’s official acts are ruled by the advice of the prime minister, who in turn is controlled by the House of Commons.

There are many subtle distinctions in British government but none more vital, as Gladstone once remarked, than the distinction between the *king* and the *crown*, between the monarch as a person and monarchy as an institution. There is in fact a world of difference between the two, yet it is often overlooked even by Englishmen themselves. In everyday speech they attribute to their monarch many prerogatives which belong to the office that he or she holds. These prerogatives do not in fact belong to Queen Elizabeth II, but to an abstraction known as “the crown,” of which the queen is merely the physical embodiment. It might just as well be called the Consent of the Governed, or the Will of the People.

The transfer of power from the one to the other. The whole development of the British constitution, in fact, has been marked by a steady transfer of powers and prerogatives from the king as a personage to the crown as a concept. The personal status of the king has not been greatly altered; he has always been and still is above the law; but parliament has bound him to definite modes of procedure.¹ His official acts have been brought within control of the laws and customs of the realm. This gradual establishment of parliamentary control over the royal prerogative covered a long period; it began with Magna

¹ This, in some degree, extends to the king’s personal affairs—as events connected with the abdication of Edward VIII disclosed. (See below, p. 51.) The king’s religion has been restricted since the seventeenth century. Now it would seem to be established that parliament, through the prime minister, may also control his choice of a wife, so long as he continues to be king.

Carta or earlier, and was not fully completed until well into the nineteenth century. Today the question is not in doubt.

The crown. The distinction between the king and the crown is reflected, whenever a monarch dies, in the announcement: "The king is dead; long live the king!" What this really means is: "The king is dead; long live the crown; long live the office which one monarch has passed on to another." The death of a king makes no more difference in the powers and duties of the crown than takes place in the constitutional powers of the presidency when one president of the United States replaces another. The crown is an institution, and it never dies. The powers, functions, and prerogatives of the crown are not suspended by the death of a king, even for a single moment.

Importance of the distinction between the king and the crown. Now if this distinction be kept in mind it will serve to clarify much that is puzzling to the foreign student of British political institutions. One reads in the text-books on English government that the crown is the fountain of justice and the chief executive of the realm, that it appoints all civil officers, commands the army and navy, makes treaties, pardons criminals, summons and dissolves parliament and does all manner of great things—which is quite true, inasmuch as the crown is the agency through which all these things are done. But in the same books one will also read that the king has long ceased to be a directing factor in government, that he can perform virtually no official act on his own authority, that he is merely a symbol of the nation's unity—all of which is likewise true. These statements, although they seem widely at variance, are easy to reconcile by the simple statement that the powers which appertain to the crown are not exercised by the king of his own volition but at the behest of those who express the will of the people.

Legal rights and actual powers. Some writers on English government have contributed to the confusion of their readers by dramatically telling the world "the crown" could disband the British army, sell off the navy, begin a war, give away British territory, make every British subject a peer, dismiss all officers of government, pardon every criminal in the realm, and do a lot of other astounding things. It is literally true that the crown could do all this and more, but only on the advice of those ministers who possess the confidence of the House of Commons. The will of the nation as expressed through the elected representatives of the people is supreme in England as in every other country which maintains a system of democratic representative government. Whether this national will is made effective through ministers who act in the name of the crown, or act in the name of parliament, does not make much difference so long as their actions are subject to the control of those whom the people have chosen as their representatives.

The succession to the crown. The British crown is an hereditary institution which parliament regulates by rules of succession. The existing rules were established by it in 1701.² Briefly they provide that the crown shall descend in perpetuity through the heirs of the Princess Sophia of Hanover, who was a granddaughter of King James I. Hence the present royal family was commonly designated, until 1917, as the House of Hanover. Then, in the flood tide of anti-Teutonic feeling, it was changed to the House of Windsor. Stipulation is made in the rules of succession that only Protestants are eligible. Until 1910 each monarch, at his or her coronation, was required to take an oath adjuring the doctrines of the Roman Catholic church; but this has now been replaced by a declaration that the monarch is "a faithful Protestant," all reference to any other religious affiliation being omitted. The title borne by the late King George VI was as follows: George, by the grace of God, of Great Britain, Ireland, and of the British Dominions beyond the Seas, King; Defender of the Faith. (The title Emperor of India, first assumed by Queen Victoria, was dropped in 1948, following India's attainment of dominion status). Queen Elizabeth II was proclaimed to be: by the grace of God, Queen of this realm and all her other realms and territories, head of the Commonwealth, defender of the faith.

Usages relating to the succession. The British crown descends according to the principle of primogeniture, that is to say, elder sons are preferred to younger. Male heirs are preferred to female heirs of the same degree.³ In default of all heirs, male or female, parliament would have to provide for a new dynasty by amending the rules of succession. The eldest surviving son of a reigning monarch is customarily given the title Prince of Wales, but this does not imply any governmental connection with Wales, nor does it endow him with any political authority over that portion of Great Britain.

Abdications. A British king may abdicate his throne, as Edward VIII did in 1936. The whole story of the events and discussions which preceded this abdication has never been made public, and perhaps never will be; but the general situation was explained by the prime minister to parliament at the time, and the former king gave his side of the story to the world four years later. On the face of things the contretemps was simple enough. The king, who had remained a bachelor until after he was forty years of age, desired to marry

² Down to 1931 these rules could be changed by the British parliament alone, but the Statute of Westminster, enacted in that year, provided that any alteration in the laws touching the succession to the throne shall require the assent of the parliaments of the various British dominions as well.

³ There is, of course, an important legal distinction between a queen who succeeds to the crown in her own right, a "queen regnant," and a queen who gains her title by being the wife of a king, a "queen consort." The former exercises the prerogatives of the crown; the latter does not. The husband of a queen who reigns in her own right does not bear the title "king." Queen Victoria's husband was given the title "Prince Consort."

an American woman who had been once divorced and had another divorce pending. Naturally he felt that his choice of a wife was his own private affair, over which his ministers had no constitutional control; but the prime minister, Mr. Stanley Baldwin, did not agree with this point of view. Thereupon the king proposed that an act of parliament be passed which would give him a wife but not a queen. To this proposal the ministry demurred, and the prime ministers of the various British dominions were consulted in accordance with the provisions of the Statute of Westminster (1931) and they declared themselves unfavorable to the king's proposal.⁴ Confronted with the alternative of giving up his proposed marriage, forcing the ministry to resign, or abdicating, Edward VIII chose the third course and signed an act of voluntary abdication in December, 1936. The succession of his next younger brother, the Duke of York, was thereupon declared and confirmed by parliament. It also received the formal assent of all the dominions.

It should be noted that Edward's choice was truly "constitutional." Had he forced Mr. Baldwin's resignation by refusing the latter's advice without abdicating, this action would have placed the monarchy in the heart of an active political issue. In effect, this would have meant a return to seventeenth-century Stuart politics, with Edward looking for a prime minister receptive to the royal suggestions who could assemble a party of "king's friends" to support him.

Regencies and the Regency Acts of 1937 and 1943. The accession of a new king is customarily followed by a coronation; but this ceremony has no legal significance.⁵ It adds nothing to the authority of the crown. If the succession passes to a prince or princess who is under eighteen years of age a regency is established to serve until that age is attained. The Regency Acts of 1937 and 1943 provide that the nearest adult heir shall serve as regent during the minority of a monarch.⁶ Provision is also made that the regent shall serve during any period when the monarch is prevented by any "infirmity of mind or body" which renders his incapable of performing the royal functions. When absence from the country prevents the monarch from promptly attending to

⁴ The Statute provides that no law touching the tenure of, or succession to the throne, shall be binding on any of the dominions unless expressly adopted by the dominion itself. Strictly speaking, the king did not ask for a change in the tenure or succession, but the prime minister felt that the matter was one on which the dominions ought to be consulted before any action by parliament was taken.

⁵ The chair or throne used at the coronation of every British monarch since the time of Edward I (1272-1307) is a homely affair with a large stone encased beneath the seat. The tradition is, although Englishmen no longer believe it, that this is the identical stone on which the patriarch Jacob pillowed his head at Bethel. According to the legend the stone was carried into Egypt by the sons of Jacob, taken thence to Spain and later to Ireland where it was placed upon Tara Hill. Finally it was brought across to Scotland and deposited in the Abbey of Scone whence Edward I took it to England in 1297. Geologists who have examined the stone assert that it is a piece of Scottish sandstone and could not have come out of any geological formation found in Palestine.

⁶ See Wade and Phillips, *Constitutional Law* (1946 edition, p. 120). At the request of Elizabeth II, however, a special act provides that her husband, the Duke of Edinburgh, shall serve as regent in case of her decease before her heir, Prince Charles, becomes eighteen years of age.

duty it is provided that a commission of five councillors of state shall be temporarily vested with the royal prerogative.

The financial support of the crown: the earlier practice. The British king receives a large annual grant from the national treasury, but it was not always so. In the early stages of the monarchy it was the understanding that "the king should live of his own"—in other words pay his own way. The Norman and Plantagenet kings were great feudal landowners and derived large revenues from their estates. Out of this income they were expected to defray not only their personal expenses but the ordinary expenses of the national government. Then, as the national expenditures grew larger, it became the custom to call upon parliament for special grants, and these grants, of course, gradually became bigger and more frequent.

The Civil List. Until 1689, however, no distinction was made between funds granted for the monarch's personal use and those appropriated for public purposes. Then began the practice of making such a separation which in time became clear and complete. So parliament now fixes, at the accession of each new king, an annual sum to be paid from the national treasury for the support of the ruling monarch and the immediate members of the royal family.⁷ This grant is known as the Civil List; it is made partly for specific purposes and partly in a lump sum which the monarch can spend as he pleases. At present it amounts to about four hundred thousands pounds (or over a million dollars) per annum.

THE POWERS OF THE CROWN

Prerogatives and powers. Originally the powers of the crown were deemed to be "prerogatives" which inhered in the person of the monarch. They had not been conferred upon him by action of parliament or of any other body. Although some writers on the British constitution have drawn a distinction between the *prerogatives* of the crown, and the *powers* of the crown, the difference is of negligible importance because there is no authority vested in the crown, howsoever derived, which parliament cannot take away if it chooses. So whether a certain function of the crown harks back to the days of absolutism and prerogative, or has evolved in the process of constitutional development, is a matter of purely antiquarian interest. The all-important fact is that the crown, in all that it does, serves as the executive agent of the British people and is under the control of parliament.

⁷ This does not mean, however, that the monarch has no personal income. On the contrary the British king, as an individual, has a very large income apart from the annual sum paid to him by parliament—how large is known only to himself, for he is under no obligation to disclose it to anybody. As Duke of Lancaster, moreover, the king still enjoys the revenues of that ancient duchy. These revenues have never been surrendered to parliament and are in addition to the allowances granted in the Civil List. See the discussion of "The Revenues and Property of the King" in A. B. Keith's *Privileges and Rights of the Crown* (London, 1936).

The crown is a part of parliament. But the crown is not only the chief executive in the British scheme of government. It is an integral part of the national legislature as well. Its assent is required in the making of laws. The crown is likewise the fountain of justice and the dispenser of pardons. Thus it forms a part of the executive, legislative, and judicial mechanism.

This is illustrated by the nomenclature of government. All this crops out in the nomenclature of British administration. Arrests are made in His Majesty's name. Criminal cases are listed in the courts as *Rex versus* So-and-So. In his public utterances the king speaks of "my government," "my ministers," "my ambassadors," and "my people." Britishers call themselves *subjects* of His Majesty—not *citizens* of Great Britain. These expressions, however, are merely the survivals of ancient usage; they do not point to the exercise of any personal authority on His Majesty's part. The substance of power has departed, leaving only the shadows behind. Yet the persistence of this fiction of royal supremacy is not without value. In the public imagination it has a unifying, dignifying, and stabilizing influence. Englishmen agree that it exerts a psychological influence in moderating the bitterness of partisan feeling. For, after all, it is His Majesty's government that is ruling the country—not a Conservative government, or a Labor government, or a Liberal government. And it is "His Majesty's Opposition" that sits on the other side of the House. It is allegiance to His Majesty that binds all British subjects together. It is His Majesty who forms the focus of British national power. Phrases and symbols have a more subtle and far-reaching influence on government than we sometimes suspect.

The crown's part in legislation: 1. Orders-in-council. Down to the close of Charles I's unhappy reign, it was contended by the monarchists that the king had inherent legislative power and possessed the right to issue decrees without the concurrence of parliament. These enactments were known as ordinances. But the right to issue ordinances has long since been lost. Orders-in-council are still issued by the crown, but such orders are never promulgated save at the behest of ministers who owe their authority to the will of parliament.

2. Statutes. So it is with the enactment of statutes. Ostensibly they are the handiwork of the king-in-parliament. This is indicated by the wording of the preamble which is affixed to every act of parliament, to wit, that the statute is enacted "by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same."⁸ No act of parlia-

⁸ When a statute is enacted by the House of Commons alone, under authority of the Parliament Act of 1911, the reference to the advice and consent of the "Lords Spiritual and Temporal" is omitted.

ment, therefore, can go into force without the assent of the crown. But this assent is never denied; it is always given as a matter of course. What would happen if the royal assent were refused is something that will be explained a few pages later.⁹

Functions in relation to parliament: 1. The crown summons, prorogues, and dissolves parliament. The crown takes the initiative in summoning parliament, subject to the requirement that the summons must be given at least once a year. There is no law which requires parliament to be brought together once a year, but if it were not so summoned certain annual acts would expire. This would leave the nation without army regulations, without revenue from the income tax, without appropriations to carry on the government, and otherwise in a predicament. The crown also prorogues parliament at the end of each session, and dissolves it when the time comes for a general election. When a new parliament meets it is usually greeted by the monarch in a speech from the throne.

The fiction and the facts. But the king as an individual has no discretion in the performance of these functions. The ministers determine when parliament shall be called together, when it shall be prorogued, and when dissolved.¹⁰ Even the speech from the throne is written by the prime minister and put into the monarch's hands to be read. It expresses the views and opinions of the cabinet, not those of the king. Having delivered his speech from the throne the king withdraws, and does not again appear in parliament during the rest of its session. In the early stages of English parliamentary history the king actually presided at the sessions, but for more than 200 years no monarch has attended a meeting of parliament except on the opening and closing days, and not always even then.

2. The assent to laws. When measures have been passed by parliament they are laid before the king for his assent. This royal assent may be given by him in person or he may authorize certain commissioners to "declare and notify his royal assent" for him. That is what he usually does nowadays. The assent is not given by signing the measures as is done by the president of the United States. The practice is for an official known as the clerk of the crown to read out the titles of the bills which have been passed, whereupon another official, known as the clerk of the parliaments, solemnly pronounces a phrase in the old French of Plantagenet days, while the lords commissioners look on in silence.

"The king wills it." Ordinary public bills are assented to with the words "Le Roy le veult." Appropriation bills receive the benediction "Le Roy remercie

⁹ See below, p. 57.

¹⁰ Some writers have raised the question whether he is bound to dissolve parliament on the ministers' advice if he can get another ministry, having the confidence of the House of Commons, to carry on.

ses bon sujets, accepte leur benevolence, et ainsi le veult." Private bills are assented to with the declaration "Soit fait comme il est desire." In the old days, when the king decided to withhold his assent from a bill, he merely promised (like a modern politician) that "Le Roy s'avisera"; but not for more than 200 years has any English monarch or clerk of the parliaments greeted a measure with these procrastinating words.

The quaint procedure. The whole procedure is quaint and characteristically English. From time to time an official known as the clerk of the crown makes a list of the bills which have passed both Houses. This list gives the title of each bill only. Then the king issues a document, bearing the royal sign manual and the great seal of the realm, which authorizes a commission of five persons to go through the form of assenting to these bills on His Majesty's behalf. These commissioners are almost always peers, and the lord chancellor is one of them.

In due course these five gentlemen put on scarlet robes, trimmed with ermine, and seat themselves on a bench immediately beneath the gilded throne in the House of Lords—the lord chancellor in the center and his four colleagues flanking him, two on either side. When all is in readiness the lord chancellor announces that "His Majesty has been pleased to issue a commission to several lords therein named for declaring his royal assent to several acts agreed upon by both Houses of Parliament." Thereupon the resplendent official messenger of the House of Lords, known as the Gentleman Usher of the Black Rod, struts out of the red chamber and across the corridor to the House of Commons, where he knocks on the door, and, being admitted to the House, announces that the lords commissioners desire the attendance of the Commons in the other chamber.

Cocked hats and French phrases. With the speaker and the serjeant-at-arms leading the way, the "faithful commoners" (usually only a few of them) troop across to the House of Lords and line up in the rear part of the chamber, where they remain standing. The speaker bows gravely to the lords commissioners on their bench, whereupon the latter all raise their cocked hats. The clerk of the Lords then reads the royal letters-patent appointing the commissioners. Each commissioner doffs his hat once more at the mention of his name and title. When the reading of the document is finished, the clerk of the crown and the clerk of the parliaments take their places on either side of the table. The former reads the title of each bill and the latter pronounces after each the Norman-French formula, as has been explained. "School Teachers' Superannuation Act," says one clerk; "Le Roy le veult," gravely replies the other, as he bows low to the lords commissioners. "Manchester Gasworks Extension Act," recites the first clerk; "Soit fait comme il est desire" is the reply in this instance—the measure being a private bill.

A mere formality. So the royal assent is now a picturesque formality and nothing more. The king does not even read the measures.¹¹ Why should he? He assumes no responsibility for them. It is enough that they have been passed by both Houses of Parliament. They would not have been so passed if the king's ministers had opposed them. So it is the ministers who have the responsibility. It is they who form the target if anyone has criticism to offer.

Why the royal assent to laws cannot be withheld. What would happen if some headstrong king should decline, despite the advice of his ministers, to give the royal assent to a bill passed by parliament? That is not a hard question to answer. In such a highly improbably contingency the ministry would at once resign. It could not continue in office with a king refusing to give it his confidence. Then the king, presumably, would summon a new prime minister and ask him to form a cabinet. But the House of Commons would refuse to support the new prime minister, otherwise it would be taking the king's side against itself. So there would be nothing to do but to dissolve the House and leave the issue to the people. In other words, to refuse ministerial advice would be to enter the arena of politics and embark upon a course of action that could only lead, in the end, to the discrediting of the monarchy and possibly to a forced abdication.

The long-established precedent. There is not much likelihood that any British king will ever press the issue to such a perilous point. On no occasion, during the past 100 years, has a monarch ever even hesitated in the matter of giving the royal assent to bills passed by parliament. So the royal veto is obsolete and the probability is that it will never be revived. The statement is sometimes made, by way of giving a realistic touch to the situation, that "if parliament were to send the king his own death warrant, he would be under the necessity of giving his assent to it." But parliament has long since ceased to enact death warrants, or bills of attainder, either for the king or for anyone else.¹²

Back in the days of Charles II, one of his courtiers after an evening of revelry wrote on the door of the royal bedchamber this little inscription.

Here lies our sovereign lord the king,
Whose word no man relies on;
Who never says a foolish thing,
Nor ever does a wise one.

To which Charles replied that it was all very true—inasmuch as his sayings were his own whereas his acts were the acts of his ministers. In the making of

¹¹ George III, for a time, tried to do it but found the task too great. It is the prime minister's duty to inform the king concerning the general purport of all important legislative proposals that are pending in parliament; in this way the monarch is enabled to keep himself sufficiently posted without reading the measures.

¹² In 1936, however, Englishmen witnessed the unique spectacle of Edward VIII giving the royal assent to the Act of Parliament which provided for his own abdication.

laws the king is a participant, but his participation can be neither wise nor foolish, and he assumes no responsibility for it.

The absence of royal authority does not imply the absence of royal influence. But although the king has lost all formal authority in relation to the making of laws he is by no means without influence in this field of government. As a matter of courtesy, fortified by usage, he is always kept informed concerning the measures which his ministers propose to lay before parliament. It is not customary to burden the king with matters of routine or detail, but when important measures are being considered by the cabinet it is the duty of the prime minister to ascertain the monarch's opinion, if he has any. The royal opinion may be given much or little weight, depending upon the grounds for it, but the will of the ministers must prevail if they insist. A great deal depends, of course, upon the ability and personal force of the monarch. Something also hinges upon the relations between him and his prime minister. These may be intimate and cordial, or they may be of a reserved and strictly official character.

Victoria and her two great ministers. Queen Victoria, for example, was on very friendly terms with Disraeli, who consulted her on all the high spots of governmental policy; but she disliked Gladstone, partly because he bothered her with details and often blurted out untactful things. Disraeli was once asked the secret of his ability to get along so amicably with his headstrong sovereign. "I never deny," he said, "I never contradict—and I sometimes forget." Victoria herself is said to have explained her favoritism by remarking that "Disraeli treats me like a woman, while Gladstone talks to me as though I were a public meeting."¹³ Her son, Edward VII, was a man of the world, a good politician, and a better diplomat. If he ever had a difference of opinion with his ministers he kept it to himself. Her grandson, George V, managed to maintain cordial relations with prime ministers of such widely varying types as Baldwin, Lloyd George, and Ramsay MacDonald, and was freely consulted by them all. Edward VIII, during his reign of less than a year, did not have much chance to stamp the impress of his personality upon the course of British government, but there is every reason to believe that his own views did not always coincide with those of his ministers. George VI apparently kept himself entirely clear of any involvement in politics. To what extent the personal opinions of a British king are influential with his ministers or are disregarded by them, there is no way of knowing. Interchanges of opinion between the two are in the highest degree confidential on both sides.¹⁴

¹³ For a full discussion of their relations see Philip Guedalla, *The Queen and Mr. Gladstone, 1845-1879* (London, 1933); J. A. R. Marriott, *Queen Victoria and Her Ministers* (London, 1933); and F. Hardie, *The Political Influence of Queen Victoria, 1861-1901* (London, 1935).

¹⁴ The general extent of monarchical influence upon governmental policy is discussed at length in J. A. Farrer, *The Monarchy in Politics* (New York, 1917).

The crown's part in administration. The crown is not only a participant in lawmaking but the titular chief executive as well. All executive authority, of whatever character, is exercised in its name. It is the function of the crown, for example, to see that the laws are observed and enforced. To this end all the higher executive and administrative officers of the realm (with a few exceptions of slight importance) are commissioned in its name.¹⁵ With some exceptions, also, the crown has the right to suspend or dismiss these officials. Thus it controls the entire personnel of civil administration. Similarly it is commander-in-chief of the army, the navy, and the air force—as is the chief executive in all other countries, including the United States. Even a declaration of war can be issued by the British crown without consulting parliament. But the money needed for carrying on a war can only be had by parliamentary action.

Foreign relations. The crown conducts the foreign relations of Great Britain, sending instructions to British ambassadors, ministers, and consuls everywhere. The crown is also the treaty-making authority, and all international agreements are made in its name. Treaties can be drawn, ratified, and put into operation without parliamentary concurrence, provided, of course, that they do not stipulate for the cession of territory, or the payment of money, or for something else that requires parliamentary action to make them effective. Such treaties, therefore, usually contain the provision that they shall not go into effect until after parliamentary approval has been given.¹⁶

Thus it will be seen that the British crown possesses in theory all the executive powers that are vested in the chief executive office of the United States, and more besides. But an overwhelming restriction placed upon it in practice is, namely, that all its actions shall be authorized in advance by ministers who are responsible to the elected representatives of the people. Sir Sidney Low has remarked that the British crown is merely “a convenient working hypothesis,” but in its constitutional sense it would seem to be a good deal more than that. A government cannot be conducted by hypothesis. The crown is an “institution” that governs the United Kingdom with the approval of the House of Commons. Its place in the government of the British dominions will be explained in a later chapter.

All the powers of the crown are put into action by the prime minister and his colleagues. Now this is merely a figurative way of saying that the prime minister and his cabinet are the ones that control the government. It is they who direct every action of the crown. The prime minister of Great Britain

¹⁵ This does not mean, of course, that the commission of every civil, military, and naval officer is actually signed by the king. Much less does it mean that the appointees are selected by him.

¹⁶ On the general subject see A. D. McNair, *The Law of Treaties: British Practice and Opinion* (New York, 1938).

is the real chief executive, working under cover of an ancient mask. He and the other ministers see that the laws are carried into effect. They spend the money that parliament appropriates. They decide who shall be appointed to office. They direct British foreign policy and make treaties. They even decide issues of war and peace. When Great Britain declared war against Germany in September, 1939, it was the prime minister, Chamberlain, acting in the name of the crown, who made the declaration. But he would not have done this unless he had been certain that the House of Commons would endorse his action and provide the means necessary for carrying on the war.

The completeness of the cabinet's control as illustrated by the appointing power. The ministers, therefore, and not the king, are the custodians of the powers of the crown. The completeness of this control is shown by the fact that it extends (with a few exceptions) even to the selection of the king's personal staff. The king's private secretary is his own choice and does not change with the advent of a new ministry. He is a useful channel of communication between the king and the prime minister on confidential matters. But the other high officers of the royal household are in most cases appointed with the approval of the ministry. This might seem to be carrying the ministry's guardianship to an absurdity, and Queen Victoria once raised a fuss about it.¹⁷ But it is a wise custom because there is an obvious desirability of making sure that those who are in immediate attendance on the king or queen shall not be hostile to the ministry in power.

Why parliament so readily bestows powers on the crown. So, when parliament confers authority on the crown it does no more than delegate power to one of its own committees, for the cabinet is the great standing committee of the Lords and Commons. It is customary for parliament to provide from time to time that various things may be done by orders-in-council, that is, by the privy council in the name of the crown. This is merely a roundabout way of giving power to the ministers. To the king as an individual, parliament never grants any authority. To do so would be out of keeping with the whole spirit of the British constitution.

The crown and the "fountain of justice." It is often said that the king is "the fountain of justice and honor." Englishmen are fond of this expression, but it is entirely figurative, a survival from the old, far-off, forgotten days when the king actually intervened to set aside the decisions of the courts and when the king's conscience spoke the last word in judicial administration. Today

¹⁷ In 1839 Sir Robert Peel was asked by Queen Victoria to form a ministry. Before doing so he requested an assurance that certain high-titled ladies in the queen's household (known as the Ladies of the Bedchamber) should be replaced by others who were in sympathy with Peel's party. The queen declined to agree and Peel thereupon refused to accept the post of prime minister. Somewhat later the queen modified her objections, whereupon a compromise was arranged and Peel took office.

neither the king nor the crown is a fountain of justice save in one respect, namely, in the case of those issues which come before the judicial committee of the privy council. There, as will be seen later, the crown still functions as a court of last resort.¹⁸ But the crown cannot of itself establish any new court, or change the jurisdiction or procedure of any existing court, or alter the number of the judges, or the mode of their appointment, or the tenure of their office. It is true that the judges of the regular courts are commissioned by the crown, but it has no control over their actions. It is also true that the crown has the prerogative of pardon, but this is not a judicial power; it is an executive power which the ministers control.

And the "fountain of honor." The expression "fountain of honor" also goes back to the time when the monarch, at his own discretion, had the right to create new peers, to bestow baronetcies, knighthoods, and other honors, and even to grant pensions. Henry VIII confiscated most of the estates held by the monasteries and with these lands endowed many new families. The Stuart kings made peers of their personal favorites. But the king's personal preference no longer controls the making of peers or the granting of other titles.¹⁹ Public honors are still bestowed by His Majesty, but usually on the initiative and always with the prior assent of his ministers. On appropriate occasions each year a list of peerages and other honors is announced. This list has been prepared by the prime minister, and it may contain the names of persons who are utterly unknown to the king. It may even include the name of someone who is personally distasteful to him. The prime minister, however, is mindful of the king's sensibilities in making up the list. As a matter of courtesy he may add a name or strike off a name at the monarch's request. But such action must in all cases be governed by the fact that the prime minister, not the king, is responsible to parliament for inclusions or exclusions. If the list of honors is open to criticism, it is he, and not His Majesty, who must bear the brunt of it.²⁰

The crown and the church. Since the Act of Supremacy was passed, about 400 years ago, the headship of the Church of England has been vested in the crown. The crown, accordingly, appoints the archbishops, bishops, and other ecclesiastical dignitaries. In its advice concerning these ecclesiastical selections, however, the cabinet usually gives deference to usage in promoting clergymen from lower appointments to higher, but there is no obligation to do this. The advisers of the crown have a free hand in the matter. Prior to 1919

¹⁸ See Chapter xvii.

¹⁹ An exception is made in the case of the Victorian Order, in which rank is granted at the personal preferences of the monarch.

²⁰ On rare occasions the monarch has offered a peerage to someone without consulting his ministers, but these are cases where, because of the circumstances, ministerial approval could be taken for granted.

parliament was the legislative organ of the Established Church, but in that year it enacted the Church of England Assembly (Powers) Act which enables the national assembly of the Church of England, not a statutory body, to pass measures which, under certain limitations, can be presented for the royal assent if a resolution to that effect is passed by both Houses of Parliament. Such measures may relate to any matter concerning the Church of England and may actually repeal an act of parliament. This represents a very remarkable development in English lawmaking, a step in the direction of legislative devolution. The crown, as head of the Established Church, is also vested with final authority in certain matters of ecclesiastical discipline; but it has been provided by statute that such controversies shall be heard and determined by the judicial committee of the privy council.

THE JUSTIFICATION OF MONARCHY

Why the monarchy endures. English history abounds in paradoxes, and not least striking among them is the paradox that the crown grows stronger as democracy spreads. The powers of the *king* have dwindled to insignificance; but the strength of the *crown* has become steadily greater during the past hundred years. Now the question naturally arises: If the authority of the crown is no longer exercised by the king, why retain the kingship at all? Why not let the prime minister assume in name, as in fact, the executive headship of the nation? What good purpose is served by continuing to use fictions and figures of speech which have long since ceased to square with the realities? Why keep the ministry at work behind a mask? Would it not be better to abolish the institution of royalty and save the hundreds of thousands of pounds per annum that it costs the taxpayers of the United Kingdom?

Reasons of sentiment. A satisfactory answer to this question would be neither short nor simple. Nor would it carry much conviction to the minds of those who do not understand the traditional conservatism of the British temperament or the actual workings of parliamentary government under the party system. Traditions count for a good deal in the British political life, and sentiment also. People are not disposed to throw overboard, without considerable provocation, an institution which they have maintained for over a thousand years. "Governments long established should not be changed for light or transient reasons," to use Jefferson's words. But sentiment is not the only thing that keeps monarchy in the saddle. There are practical considerations as well.

Some practical reasons. The first, and doubtless the strongest, practical reason for the continuance of the kingship is the fact that if it were abolished something would have to be put in its place. It would be necessary to appoint, or to elect, or in some other way to secure a titular head of the nation. The

prime minister is not the titular chief executive in any country. It is impossible to conceive of a stable parliamentary government without there being at its head someone whose tenure of office is beyond the fickleness of a parliament or a congress. This tenure must be long enough to assure stability—be it four years as in America, or for life as in Britain. If the British monarchy were abolished and a republic set up, it would be necessary to provide for a lord protector, or a president, or some other functionary chosen either by parliament, as in France, or by the people, as in America.

An American or a French president? The question would then arise: What powers should this titular executive possess? If he were given a large measure of independent authority, as in the United States, it would necessarily be at the expense of powers now possessed by the cabinet and through it by parliament. In other words there would be an end to the supremacy of the House of Commons. If, on the other hand, the new titular executive were given no substantial power, or as little as is possessed by the president of the French Republic, he would only be perpetuating the position of the crown under a different name. And there would be the constant danger that this elective head of the state, although endowed with no real power, would strive by devious means to obtain it. He would be under constant temptation to do what President Millerand did in France under the Third Republic—with similar results.²¹ When the titular chief executive is designed to be a figurehead, there is a good deal to be said for keeping the post hereditary.

Neither type would do. Englishmen have grown accustomed to the direct and continuous control of the House of Commons over the executive branch of the government. They have never looked with favor on the doctrine that one branch should serve as a check upon the other. There is no likelihood that they would consent to the establishment of an independent presidential executive on the American model. The only alternative is an executive like the president of the French Republic, who neither reigns nor governs. That, to the mind of the average Englishman, would be no improvement upon what he already has.

Tangible services which the monarch performs: some examples. The British king has parted with his powers, or “holds them in abeyance” as some prefer to say, but this does not mean that he performs no useful service. The whole executive authority returns temporarily to his hands whenever a cabinet resigns. During the brief interval between the resignation of one prime minister and the installation of another, the king is the sole depositary of executive power. He is the one personage in the realm who stands aloof from partisan strife and can be depended on to act impartially. He is the umpire who sees that the great game of politics is played according to the rules. There are

²¹ See Chapter xxiii.

times, moreover, when a wise king can assume, in the public interest, the role of peacemaker between the warring political factions whose hostility is working injury to the country as a whole.

A symbol of imperial unity. Finally, the king supplies the vital element of personality and picturesqueness in government. The average man does not easily get hold of abstractions. Sovereignty, ministerial responsibility, powers of the crown, and such things mean little to him. But anyone can visualize a king on the throne. This is particularly important in a far-flung empire which includes white, black, brown, red, and yellow men on five continents. Tell a Dyak in Bornco, a Fiji islander, or a "big, black, bounding beggar" in the Egyptian Sudan that he must give allegiance "to the concept of imperial unity" and he will get as far with the idea as he would with an exposition of atomic energy. But when you talk to him of a king who wears a crown, sits on a throne, and claims the allegiance of a vast empire, he is more likely to get the picture.

The link of empire. For a considerable part of the Commonwealth and Empire the king supplies the one remaining tangible and legal link that holds together this extraordinary collection of governments and peoples.²² Those parts of the Commonwealth that still accept the king as their legal chief-of-state in whose name their ambassadors are sent and whose personal representative, the governor-general, calls their cabinets into office and dissolves their parliaments, still feel a sense of loyalty and fraternity due in part at least to this common allegiance. Of the newer dominions, the Republics of Ireland and India have severed the royal link. Indeed, the Republic of Ireland has resigned from the Commonwealth for all practical purposes and no longer attends Commonwealth conferences. India, on the other hand, is emphatic in declaring its intention to remain a Commonwealth member, and even though it has repudiated all allegiance to the crown, it recognizes Queen Elizabeth as head of the Commonwealth.

The monarch as the head of British society. In every country, no matter how democratic it may claim to be, there are bound to be ranks and gradations of society. These gradations may be based upon birth and lineage, or upon length of residence in the country, or upon wealth, or upon political prominence. In Great Britain, for many centuries, social status has rested largely upon birth and lineage. This being the case, it is natural that the headship of British society should belong to the monarch. The king, the queen, and the members of the royal family are in a position, if they choose, to set the social standards of the nation. Whether they have performed this function better or worse than it would have been performed by a social leadership based upon popular election

²² The somewhat technical reasons for this are explained in A. B. Keith, *The Privileges and Rights of the Crown* (London, 1936), pp. 107-116.

is a question upon which outsiders may disagree, but on which most Englishmen do not. Social leaders will arise under any form of government, and they will exercise a dominant influence not only upon the manners and tastes of the people but upon morals, art, literature, education, and benevolence. A royal court, when it is minded to set a good example, can do it in an effective way. It can do much for the improvement of the social amenities and for the enhancement of the national pride.

Not incompatible with social democracy. Nor is the institution of monarchy incompatible with an increasing degree of social democracy. The stiffness of the Victorian age has gradually been modified in the direction of freer, more democratic royal behavior. The monarch and members of the royal family now mingle with the people to an extent which would have been thought undignified a century ago.

Nothing would be gained in Great Britain by abolishing the monarchy. If the institution of royalty were standing in the way of political changes it would be another matter; but the abolition of the kingship would not make England any more democratic than she is today, because the people already control to the fullest possible extent all branches of their government. On the other hand the abolition of the monarchy would necessitate considerable changes in various fields not directly connected with politics. It would leave the Church of England without a titular head; it would compel a recasting of the social priorities; it would change the entire official nomenclature of British government. The saving in expenditure would be inconsequential, for the cost of maintaining the kingship is less than five one-hundredths of one per cent of the total British budget, and the royal palaces would still have to be maintained and would remain a charge upon the public treasury.

The force of habit. The arguments for abolishing the British monarchy are like those put forth in favor of reformed spelling: they would carry more weight if people were not accustomed to what they have. Englishmen, like other people, and perhaps to an even greater extent, prefer what they are accustomed to—whether it be cricket games, afternoon tea, or political institutions. With a clean slate to work upon it is improbable that the British people would set up, in the mid-decades of the twentieth century, a hereditary monarchy, a House of Lords, and an Established Church. But would the people of the United States now create an electoral college as part of the machinery for electing a president, or give all the states equal representation in the Senate, or let every state make its own divorce laws? There are enough urgent problems in both countries without diverting attention to the endurable anachronisms.

Growth of royal prestige during the past hundred years. The popularity of the kingship among all ranks of the British people has often been

commented upon by outsiders, but this was not always so. In the earlier years of the nineteenth century the royal prestige was at a rather low ebb, but it made a notable advance during the long reign of Queen Victoria (1837-1901), and it has not greatly declined under her successors. There have been proposals to abolish the House of Lords, to reform the cabinet, and even to disestablish the Established Church; but from no source worthy of consideration has there emanated any serious proposal to abolish the monarchy. Seven or eight decades ago there was a republican group in England and it seemed to be gaining ground.²³ Today it has virtually disappeared, except possibly for the Communists. Even the leaders of the Labor party, although some of them profess to be "republicans in principle," are agreed that the monarchy will probably have to be retained, essentially in its present form, because there would be great difficulty in getting both Great Britain and the dominions to agree upon anything else. The British people have come to realize that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics, and with no ambitions to gratify, lending dignity to government but not standing in the path of the public will—they have come to recognize that whatever may be the causes of their varied troubles, the monarch is not one of them. If the crown, as has been well said, is no longer the motive power of the ship of state, it is the spar upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel.

General History. There is no single volume on the development of the British monarchy, and it would be impossible to cover the subject except by writing a constitutional history of the realm. On the development of the kingship to the close of the Middle Ages there is much material in the standard works of Freeman, Stubbs, Ramsay, Haskins, Maitland, Round, Norgate, Green, Tout, Vickers, and Davis—the titles of which may be found in the card catalogue of any good library. The vicissitudes of the monarchy during the Tudor and Stuart periods are narrated in the works of Gardiner, Pollard, Fisher, Innes, Montague, Trevelyan, Firth; J. D. Mackie, *The Earlier Tudors 1485-1558* (New York, 1952); and G. R. Elton, *The Tudor Revolution in Government* (New York, 1954); all of which are well known to every serious student of English history. Lecky and Walpole cover the eighteenth century. There are excellent outlines in R. B. Mowat and J. D. G. Davies, *A Chronicle of Kingship, 1066 to 1937* (London, 1937), and Clive Bigham, *The Kings of England, 1066-1901* (New York, 1929). Mention should also be made of Philip Lindsay's *Kings of England* (London, 1937).

Powers and Functions. The most useful study of the powers and functions of the crown is Sir William R. Anson, *Law and Custom of the Constitution* (4th edition, 2 vols., Oxford, 1922-1935), Vol. II, Part I, pp. 1-70, 247-259; but there are excellent chapters on the subject in A. Lawrence Lowell, *The Government of England* (2 vols., New York, 1908), Vol. I, chap. i; in F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), especially chaps. iv-v; and

²³ Michael MacDonagh, *The English King* (London, 1929), pp. 153-179.

in Sir John A. R. Marriott, *Mechanism of the Modern State* (2 vols., New York, 1927), Vol. II, chaps. xxiii-xxiv; W. I. Jennings, *The British Constitution* (3rd edition, Cambridge, 1950), chap. v. A brief discussion may be found in H. Lloyd Parry, *English Central Government* (London, 1939).

Royal Influence and Special Topics. Discussions of considerable value may be found in Michael MacDonagh, *The English King* (London, 1929); A. B. Keith, *The King and the Imperial Crown: The Powers and Duties of His Majesty* (London, 1936), and the same author's briefer book on *The Privileges and Rights of the Crown* (London, 1936); H. J. Laski, *The Crisis and the Constitution* (London, 1932); K. Martin, *The Magic of Monarchy* (London, 1937); R. J. Blackham, *The Crown and the Kingdom* (London, 1933); Richard Jebb, *His Britannic Majesty* (London, 1935); John Buchan, *The People's King, George V* (Boston, 1935); Harold Nicholson, *King George the Fifth: His Life and Reign* (New York, 1953); Keith V. Gordon, *The King in Peace and War* (London, 1940); H. Evatt, *The King and His Dominion Governors* (Oxford, 1936); and the books already mentioned on p. 58 (footnotes).

CHAPTER V

The Ministry and the Cabinet

The cabinet lives and acts simply by understanding, without a single line of written law or constitution to determine its relations to the monarch, or to parliament, or to the nation; or the relations of its members to one another, or to their head.—W. E. Gladstone

A slim legal basis. For more than two centuries the statement of an eminent prime minister which stands at the head of this page was literally true, and it gave warrant to his further remark that “the British cabinet is the most curious formation in the political world of modern times.” But it is no longer strictly true that the cabinet exists “without a single line of written law” on which to rest itself, for the Ministers of the Crown Act (1937) expressly mentions the cabinet and provides a schedule of salaries for its members. Incidentally this act also provides a salary for the leader of the Opposition in the House of Commons although he is the principal thorn in the flesh of the cabinet.

For a vital institution. Yet Gladstone’s characterization remains fundamentally correct. The Act of 1937 says nothing about the functions or responsibilities of the cabinet; these still rest upon the long-standing customs of the realm. And this is a remarkable fact, for the cabinet is the most important single piece of mechanism in the whole structure of British government. It is more important today than it ever was. Indeed it has become the pivot upon which the whole machine revolves. Without a knowledge of what this body is and does, without an understanding of its functions and responsibilities, no one can obtain a clear picture of the British political system.

HOW THE CABINET AROSE

Its early development. Among the governmental institutions of the modern world the British cabinet is perhaps the best example of what time and circumstance can create. The old Curia Regis of Norman times, it will be re-

membered, became the progenitor of the privy council, a body which gave advice to the king and helped him with the routine work of administration. Its members were chosen at the discretion of the monarch, and although they were often drawn from the nobility (and hence members of parliament) it was not essential that they should be. During the Tudor and Stuart periods the privy council developed into a powerful body, and through its various committees conducted almost every branch of the national administration. Its members, moreover, were not responsible to parliament but to the king alone. The only way in which parliament could reach them was by impeachment, and even this method was not always effective, for as a last resort the king could pardon an impeached privy councillor in case of conviction.

A wheel within a wheel. Meanwhile the privy council kept growing in size as well as expanding its functions. With this growth of its membership and the multiplication of its committees, the council eventually became so unwieldy that it ceased to be useful as an advisory body. Its numerous members could not agree on anything without interminable discussions. The rank of privy councillor, moreover, was frequently bestowed by the king as an honorary distinction upon men who rarely or never attended the council's meetings. It was natural, therefore, that the king should adopt the practice of summoning to his private consultation room, or "cabinet," a few selected members of the council who could give him advice without long arguments and too much publicity. The exact date at which this practice originated is not known; it probably began some time before outsiders learned of it. In the time of Charles II (1660-1685), at any rate, the "cabal" consisted of five members, all of whom were noblemen and close friends of the king.

The Danby dismissal and its significance. This virtual superseding of the privy council, so far as its advisory functions were concerned, was not relished by parliament. The House of Commons looked upon it as an attempt "to introduce a tyrannical and arbitrary way of government." The Commons desired to control the royal advisers, which it could not do so long as the king chose them without public announcement and conferred with them in secret. There remained, nevertheless, the weapon of impeachment, and it was by using this procedure that parliament eventually made good its contention that whoever gave the king advice, whether in public or in secret, should do so at his own peril if the advice turned out to be bad.

This principle was definitely established in 1679 when parliament found a way of removing one of the king's most trusted counsellors despite all that Charles II could do to save him. The adviser in question was Thomas Osborne, Earl of Danby, who held the office of lord treasurer. When the House of Commons proceeded to order his impeachment, the king dissolved it and ordered

a new election. But the new House, when it assembled, renewed the attack. Danby pleaded that whatever he had done was by order of the king, and that the king could do no wrong. But parliament went ahead with the prosecution and, on conviction by the House of Lords, Danby was sentenced to imprisonment in the Tower. In this instance the king did not venture to create a further breach with parliament by issuing a pardon.

How it created a dilemma. But the whole situation was one that could not continue. The king had a right to choose his own advisers. No one questioned this right which had existed from time immemorial. It was his prerogative to choose men in whom he had confidence and to entrust them with the routine work of administration, this work to be done in accordance with the royal instructions. But on the other hand parliament had now made good its right to remove by impeachment any royal adviser whom it did not approve. Not only that but it might punish him by imprisonment for having wrongly advised the king, or for having carried out the royal instructions to the detriment of the national welfare. Surely this was a tight place for any minister to be in. If he disobeyed the instructions of the king he would be dismissed from office; if he obeyed them he might be impeached by parliament and sent to prison. No government could function under such an arrangement. Some plan of unified responsibility had to be devised.

A solution found in the establishment of full parliamentary control over the cabinet. The House of Commons had its own ideas as to how this might be done. Many years prior to Danby's dismissal it had offered a solution of the problem by declaring (in the Grand Remonstrance) that the king ought "to employ such counsellors only . . . as parliament may have cause to confide in." In other words the responsibility of the king's advisers could be unified by allowing parliament to choose them for him. But Charles I would not listen to this proposal; if he had done so he might have saved both his throne and his head. Nor was it accepted by Cromwell during his term as lord protector. Charles II, after the restoration of the Stuart monarchy in 1660, also disregarded it, and so did James II during his short term on the throne. But the House of Commons continued to urge the proposition at every opportunity, and in the end its insistence was rewarded. William and Mary, on their accession to the throne in 1688, conformed to the demand, and the doctrine that the king's ministers are responsible to parliament has not been seriously disputed since that time.

Meanwhile the privy council continued. But let us return for a moment to the privy council. As an advisory body it was gradually supplanted by the cabinet, but it did not go out of existence. There were other things for the privy council to do, and it remains a part of the British administrative machin-

ery today.¹ It is still a large body, with over 300 members. This membership is made up, in considerable part, of men who have served or are serving in the cabinet. If anyone becomes a cabinet minister he is at once made a privy councillor. When he gives up his office as minister he remains a privy councillor for life. In addition many others, who have attained eminence in political life, or as judges, or in the civil service, or in art, literature, law, or science, or in the government of the dominions or the colonies, are made privy councillors by the crown as a mark of honor. This gives them the title of "Right Honorable."

Its present functions. The whole membership of the privy council is never called together to transact business. Such plenary sessions are called only on the occasion of some important ceremony such as the coronation of a new sovereign. On the other hand "meetings of the privy council" are frequently held, sometimes a couple of times a month. Four or five members of the cabinet, including the lord president and the clerk of the council, come together (usually at Buckingham Palace) and act in the name of the whole membership. The king sometimes attends, although his presence is not essential. The business consists mainly of adopting orders-in-council which the cabinet has already agreed upon.² The privy council also maintains certain committees, the most notable of which is its judicial committee.³ Likewise the privy council office renders service in various other ways, for example, in the coordination of state-aided research.

How party solidarity came into the cabinet. The cabinet replaced the privy council in its advisory functions 250 years ago, but the method of ensuring the effectiveness of parliamentary control over the cabinet was still to be worked out. Prior to the Revolution of 1688 the kings had chosen their advisers from among their own intimate friends and supporters. The new monarchs began the innovation of selecting their advisers from both the major party groups in parliament. In this they intended well, their aim being to give both Whigs and Tories an equal measure of recognition.

But this plan worked badly, as anyone might have predicted. Ministers drawn from two opposing political parties could not work together, and the friction grew more pronounced as party lines became more plainly drawn. The cabinet proved to be a house divided against itself; it could not give unanimous advice; one faction had the confidence of a majority in parliament while the other did not. As the only way out of the difficulty it was decided to choose all the ministers from the majority party, which happened at this time

¹ One of the purposes which the privy council continues to serve is that of providing a means whereby members of the cabinet take an oath of secrecy. They are sworn as members of the privy council, not as members of the cabinet.

² For an explanation of these orders-in-council see below, Chapter vii.

³ See below, Chapter xvii.

to be the Whigs. The cabinet of 1697, popularly known as Sunderland's *Junto*, was the first British ministry constituted on the principle that all its members should possess the confidence of the dominant party in parliament. The new practice was generally followed by Queen Anne even to the extent of having Whig ministers when her own personal sympathies were with the Tories.

The work of Walpole. George I, who succeeded Anne, was a dull-witted Hanoverian who knew nothing of English political traditions. He neither spoke nor understood the English language. The details of British domestic policy did not interest him in any way. Accordingly he abstained from presiding at meetings of his cabinet and gave this function to one of its members, Sir Robert Walpole, who thus became the first prime minister in the modern sense. There had been chief ministers of the king long before Walpole's day—Wolsey and Thomas Cromwell under Henry VIII, Burleigh under Elizabeth, Strafford under Charles I, and Clarendon under Charles II. But these chief ministers did not hold their posts by virtue of their being the recognized leaders of the dominant party in parliament.⁴

Walpole was the first royal adviser to preside at cabinet meetings and at the same time serve as the leader of the House of Commons. He was, besides, a statesman of great competence and sagacity. For twenty years, while he held the confidence of a majority in the House of Commons, George I and George II let him govern the realm. To keep a majority on his side Walpole resorted to methods which would now be regarded as crooked; but it can at least be said that he never tried to hold his post without a parliamentary majority back of him. When, in spite of his skill and corruption, he failed to command a majority (1742), he resigned at once, and this notwithstanding the fact that he still retained the full confidence of the king.

Emergence of the cabinet system into its present form. During his long lease of power Walpole molded the cabinet system into the form which it retains today. He established the principle that the king, having chosen a prime minister, should leave to this minister the selection of the other ministers. He made himself the sole medium of communication, on all important matters, between the ministry and the monarch. Accepting the doctrine that the cabinet must at all times command the support of a majority in the House of Commons, he insisted that he, in turn, was entitled to his party's support. He demanded, and enforced his demand, that every Whig member of the House should stand behind the cabinet on every issue. The development of the cabinet and of the party system were thus made to proceed hand in hand. George III, when he came to the throne in 1760, made a spirited attempt to revive the personal influence of the monarch upon the course of national policy but failed.

⁴ At first the title of prime minister was disliked by Walpole because it smacked of the royal favorites of unpleasant memory.

The system continues to evolve. Since the close of the eighteenth century the outlines of the British cabinet system have remained substantially unchanged, but its various features have become clarified by a series of precedents. It has become an established rule, for example, that when a prime minister resigns, the entire cabinet must go out of office with him, in other words that the cabinet's responsibility is collective. It has become settled, as will be explained a little later, that members of the cabinet are not only responsible to the king and to parliament, but also to one another. With the steady development of the party system, moreover, the functions of the cabinet in the matter of framing the party program and transforming party pledges into laws have been given emphasis. The whole system has been shaking itself down to a stable basis; but it has done this slowly because it rests upon usage. Nor is there any reason to think that this evolution of the cabinet system has yet come to an end. It is still developing new features and will doubtless keep on doing so.

Varying size of the cabinet. Walpole's cabinet consisted of from seven to ten active members. But as the functions of national administration widened, each succeeding cabinet tended to grow larger until the membership at the close of the nineteenth century was more than twenty. Meanwhile some thirty or more additional ministers were given administrative posts although they were not members of the cabinet. In piping times of peace it was possible to do business with twenty members sitting around the cabinet table, but when the strain of the First World War came upon Great Britain the size of the cabinet proved to be a hindrance to the prompt reaching of conclusions. As Lloyd George said: "You can't wage war with a Sanhedrin."

In 1916, therefore, a war cabinet of five (later six) members was created within the regular cabinet circle and this smaller body was given full control of Britain's war program. Of the six members only one (the chancellor of the exchequer) had any administrative duties. The rest of the directory, including the prime minister, were left free to give their energies to the prosecution of the war.⁵ The plan fully justified itself and the suggestion was made that the size of the cabinet should be permanently fixed at ten or twelve members.⁶ But nothing came of this proposal, and in 1919 the old cabinet structure of about twenty members was quietly restored.

There it remained until 1931 when Ramsay MacDonald, in reorganizing his national (or coalition) cabinet, reduced the membership to ten. Four years later, with the advent of a new prime minister, it was enlarged to twenty-three and continued at about this figure until after the outbreak of the Second World

⁵ For a further discussion see John A. Fairlie's *British War Administration* (Oxford, 1919).

⁶ In the *Report of the Machinery of Government Committee* of the Ministry of Reconstruction (1918), commonly known as the Haldane Report.

War. Then, when Mr. Winston Churchill became prime minister in 1940, he organized a war cabinet, but of a different kind from that which had been set up in 1916. It consisted at first of five, and later of eight members, all of whom were free of administrative duties and were thus enabled to give their full time to the coordination of national policy and to presiding at meetings of cabinet committees. This "war cabinet," however, did not displace the regular cabinet which grew in size during the war until it had more than forty members. But at its meetings the members of the smaller body virtually dominated the making of decisions on all important issues. When the Labor government took office in 1945 the old cabinet system was restored, with a membership of twenty, later reduced to eighteen. The Churchill cabinet of 1952 had seventeen members.⁷

ORGANIZATION AND FUNCTIONS

How its members are chosen; some preliminary explanations of privy council and cabinet. How is the cabinet organized, and what are its functions at the present time? Before entering upon such a discussion it may be well to define, with some precision, certain terms which Englishmen use in describing the executive branch of their government. These terms are "privy council," "ministry," "cabinet," and "the government." In theory the privy council still controls the actions of the crown. Acts of the crown are declared to be "by and with the consent of the privy council." This is because the cabinet, until very recently, has not been recognized by the constitution or the laws. Hence no one is ever officially appointed to membership in the cabinet. He is appointed a privy councillor, sworn in as such, and then summoned to cabinet meetings. The cabinet, therefore, may be defined as a body of privy councillors who have been chosen by the prime minister to assist him in his functions.

Ministers and cabinet ministers. Another distinction is somewhat confusing to the outsider, namely, the distinction between the ministry and the cabinet, between ministers and cabinet ministers. All members of parliament who hold important administrative posts of a political character, and who give up such positions when a cabinet resigns, are known as ministers. In other words the ministers are the high officials of the crown who hold office subject to the continued confidence of a majority in the House of Commons. Today there are more than sixty ministers, but as noted above, only eighteen or twenty are cabinet ministers.⁸ The ministry does not meet as a body for the transac-

⁷ Nowadays the armed forces are represented in the cabinet by a single member, the minister of defense. The first lord of the admiralty, the secretary for war, and the secretary for air are not cabinet ministers.

⁸ The postmaster-general, the minister of transport, the minister of pensions, and the attorney-general, for example, are ministers but not members of the cabinet.

tion of business. It has no collective functions. It is only the cabinet ministers who meet.

An analogy. The duties of a minister (unless he is a cabinet minister) are individual duties only. He is the head of a minor department (the heads of most major departments are in the cabinet), but the term "ministry" is frequently used to include such functionaries as parliamentary secretaries who serve as aides to members of the cabinet. Certain ministers also serve as "whips" of the majority party in the House of Commons.⁹

A definition of the cabinet. The cabinet is the smallest of the three groups and the only one that has a collective responsibility. It is composed of those ministers whom the prime minister designates to membership in his cabinet, and the prime minister in making his designations is guided largely by precedent. But he is also influenced by the circumstances of the hour. A serious crisis in relation to any field of national activity, such as food, fuel, or transport, may dictate the giving of cabinet status to ministers in charge of such matters. It is also a rule that the leader of the government forces in the House of Commons and the holder of the similar post in the House of Lords shall be members of the cabinet.

The ministers and "the government." Finally there is "the government," a term which Englishmen use in a sense unfamiliar to outsiders. When they speak of a change in the government, they do not mean a change in the form of government. By "the government" they mean the authorities who are in control of it for the time being—namely, the prime minister and his ministerial colleagues. It is they who are responsible for the passage of "government measures" by parliament. The term most nearly analogous in America "the administration," which is somewhat loosely used to include the president, the members of his cabinet, their assistants, and others who would probably be replaced in office after a change in the party control of the presidency.

The prime minister: how he is chosen. The prime minister, as has been said, is head of the ministry, the cabinet, and "the government." The king goes through the gesture of selecting this official, but he has very little discretion in making the choice. He summons, and by usage must appoint, the leader of that political party which controls a majority in the House of Commons. If no single party controls a majority he calls upon some leader who can form a coalition or otherwise assure himself of a majority on important measures. Under the two-party system, which prevailed in England for many generations, the king's task was very simple. When a prime minister resigned by reason of a defeat at the polls or on the floor of the House, the monarch merely sent for the leader of the victors and invited him to assume office.

⁹ The functions of the parliamentary "whips" are explained below, Chapter xi.

But when three political parties are represented in the House, with no one of them controlling a majority, the royal function is not so simple. The king must then use his own judgment as to which leader he will summon.¹⁰ The main thing is that whoever takes office as prime minister shall be able to command a majority. If he can do this from within the ranks of his own party so much the better. If he cannot, then he must secure it by some coalition, compromise, or understanding with one of the other parties. When Mr. Ramsay MacDonald was invited to become prime minister in 1924 the Labor party did not control a majority in the House. But before taking office he satisfied himself that a sufficient number of Liberals would support him as against the Conservatives and thus enable him to carry on the government.

He is always a party leader. In any event the prime minister is always chosen from among the two party leaders, or the three party leaders, as the case may be. It is inconceivable that anyone other than a recognized leader would be called upon. In 1922, when Mr. Lloyd George tendered his resignation, there was no recognized leadership in the ranks of the Conservatives. The king sent for Mr. Bonar Law, who agreed to accept the post of prime minister in case the Conservative party should formally designate him as its leader, which it did. Again, in 1923, the king sent for Stanley Baldwin, on Bonar Law's retirement, and offered him the post of prime minister, but only after having consulted with prominent members of the party and making sure that the choice would be acceptable. Each political party determines for itself the methods by which its own leader is chosen. Ordinarily, however, the selection is made by a caucus which is attended by the party's membership in the House of Commons along with various other prominent party workers.

Who the prime ministers have been. During the 232 years, 1722-1954, Great Britain had forty-two prime ministers. These prime ministers, from Sir Robert Walpole to Sir Winston Churchill, headed sixty cabinets. Thirteen British premiers held the office twice; two of them three times; and one (Gladstone) was prime minister four times. Thus each English ministry has remained in power for less than four years on the whole, and the prime ministers have averaged less than six years in office.

Birth and education. While any British subject is eligible to the premiership it is significant that thirty of the forty-two were Englishmen by birth. Six were Scotsmen, three Irishmen, one a Welshman, one a Canadian, and one (Disraeli) was of foreign extraction but of English birth. Twenty-five were peers or sons of peers, and all except three or four were men of con-

¹⁰ Actually he is limited by the fact that there is now an officially recognized leader of the Opposition. If the government loses an election, the king will first call upon this personage, who, of course, may not be able to form a coalition ministry and may recommend that someone else be asked to try his hand at it.

siderable wealth.¹¹ It is worth remarking that thirty-four were university graduates—almost all of them from Oxford or Cambridge. This is striking evidence of the prominent part which the two oldest universities of England have taken in the public life of the nation.

Age and political leanings. Nearly all the prime ministers went into public life at an early age; eleven became members of parliament at twenty-one, and the average for the entire list is about twenty-five. No such precocity in politics has been shown by the presidents of the United States. The average age for becoming prime minister, however, is about fifty, which indicates that the office has demanded a considerable apprenticeship. There have been notable exceptions, of course, as in the case of the two Pitts; but for the most part the younger politicians have had to bide their time. As for their party affiliations, about one-half the whole number were Whigs or Liberals; the rest called themselves Tories, Conservatives, Unionists, or members of the Labor party. One premier, the Duke of Portland, happens to fall in two categories; for he held office twice, first as a Whig and later as a Tory.

Vocations and length of service. Few of the prime ministers have had any vocation save politics. But not all of these were dependent upon their own earnings for a livelihood.¹² A few, like the Marquis of Salisbury, were men of large wealth. As for members of the ministry, some have had long political careers. The Duke of Newcastle, for example, was continuously in one office or another for forty-six years, while Lord Palmerston was on the public payroll for forty-seven. Gladstone, as prime minister, was alternately in and out of office during more than half a century. Tenure of the prime ministership does not seem to have cut men's lives short, for their average longevity (omitting those still living) just about coincides with the Psalmist's span of three score and ten.

Prime ministers and presidents compared. About sixty-six years ago James Bryce (afterwards Lord Bryce) devoted an illuminating chapter in his book on *The American Commonwealth* to the topic: "Why great men are not chosen Presidents." In it he raised the question why the chief executive office in the United States had not been more often filled by "great and striking" men. He pointed out that among the twenty-one presidents who had held this office during the century following the inauguration of Washington, only a half dozen or so were statesmen of great or striking merit. Washington, Jefferson, Madison, Jackson, Lincoln, and Cleveland were about the only chief executives

¹¹ It is nowadays *almost* a rule that the prime minister be a commoner. No peer has held this office since 1902. In 1923 the choice was between Lord Curzon and Mr. Baldwin. Although Curzon was the chief leader, Mr. Baldwin was chosen.

¹² The prime minister, who also holds the sinecure post of first lord of the treasury, receives a salary of £10,000 per annum. Most other members of the ministry receive £5,000, but a few are paid £3,000. As an "austerity" measure, Mr. Churchill, on taking office again in 1951, announced a salary cut of £3,000 in his own salary and £1,000 in those of cabinet ministers.

of the United States who could properly be rated in 1888 as statesmen of the first rank. On the other hand, he thought that more than half the presidents during the first century of the republic were men who would now be entirely forgotten were it not that they once held the highest office in the gift of the American people. During the past sixty-six years the average may be regarded as having risen somewhat, although hardly enough to change the whole picture.

Big and little statesmen. But the presidency of the United States has not been unique in its frequent appeal to mediocrity. On the roll of the English prime ministers one can also find a fair proportion of second-rate statesmen. Among the forty-two prime ministers from Walpole to Churchill, there are not more than a dozen who meet the "great and striking" standard which Lord Bryce set up in relation to the American presidency. Walpole, the two Pitts, Peel, Palmerston, Disraeli, Gladstone, Lloyd George, and Winston Churchill about exhaust the list. With some leniency Canning, Salisbury, MacDonald, and Asquith might be added. But North, Newcastle, Grenville, Rockingham, Liverpool, Campbell-Bannerman, Bonar Law, and Chamberlain—were they more able or more striking in personality than Pierce, Fillmore, Buchanan, Arthur, or Harding? The Duke of Wellington was a valiant soldier; so was Grant; but the one proved no better than the other when entrusted with the responsibilities of high civil office. There have been great men in both positions, and men of mediocre attainments too. The theme is one on which several pages might be written, but this is not the place for it.

How the prime minister selects his cabinet. At any rate the king chooses the prime minister, and the latter proceeds to select both the ministers and the cabinet ministers. Ostensibly he has a free hand in selecting his colleagues, but there are various considerations of a practical nature which he must take into account. If a new prime minister were to regard nothing but his own personal preferences in constructing a ministry, he would make trouble in the ranks of his supporters; so he usually consults with some of his leading followers. He must also see that various interests are represented. For example, he cannot select all the members of his ministry from the House of Commons, taking none from the House of Lords.¹³ Both peers and commoners have figured in every British ministry for 200 years; but the proportion from the House of Commons has been steadily increasing.¹⁴ Lords have naturally been more numerous in Conservative than in Liberal or Labor cabinets.

¹³ There is a statutory provision which virtually requires that both Houses shall be represented in the cabinet. It prohibits more than five principal secretaries of state and five under-secretaries from sitting in one House at the same time.

¹⁴ In the first cabinet of George III, no fewer than thirteen of the fourteen members were peers. It was not until after the middle of the nineteenth century that commoners began to get an equal share of representation in the ministry. Since that time they have usually constituted half or more than half the cabinet. In the Labor cabinet, all but three or four were members of the House of Commons.

The "shadow cabinet." When in opposition, the leader of a great party prepares for the day of his coming to power by constructing a "shadow cabinet" of the men whom he will appoint when the king asks him to form a government. In the case of the Labor party, the Labor members of parliament vote in caucus by secret ballot to elect a parliamentary committee. This body leads the party delegation in parliament, and its members are virtually certain of cabinet or high ministerial posts when next the party gains control of the government. This system tends to remove a good deal of the discretionary power over cabinet appointments formerly enjoyed by the prime minister.

Ministers must be members of parliament. Every minister of the crown must be a member of parliament—of one House or the other. But this does not mean that he must be a member of parliament at the time of his appointment. Sometimes he becomes a member after his appointment to the ministry. This can be arranged, of course, by making him a peer and thereby giving him a seat in the House of Lords. But the more usual procedure is to "open a constituency" by inducing some member of the House of Commons to vacate his seat and make way for the newly appointed minister. This entails a special election to fill the vacancy, and the newly appointed minister becomes a candidate at this special election.

He can do this the more easily because neither law nor custom in Great Britain requires that a candidate for the House of Commons shall live in the constituency which he seeks to represent. When, therefore, a prime minister desires to include some outsider in his ministry he arranges that a vacancy shall be created in a "safe" constituency, that is, one in which any supporter of the government is assured of election. The member who gives up his seat is sometimes rewarded for his generosity by being made a peer, or given some dignified office which does not necessitate his sitting in parliament. The newly appointed minister goes to the scene of the special election, gets himself nominated, and is usually elected without serious opposition. The prime minister arranges the whole matter with the party organization. But the plan sometimes goes awry and the constituency turns out to be not so "safe" as was assumed.

The old rule as to vacating a seat on appointment to the ministry. Until a few years ago it was a rule that any member of the House of Commons who accepted a ministerial post thereby vacated his seat and had to go back to his constituency for re-election. The origin of this rule is interesting. Back in the days when the kings of England took an active part in politics it was their practice to seek control of the House of Commons by appointing various influential members to lucrative offices in the gift of the crown. This constituted a species of refined bribery. The member of parliament took the king's bounty,

became obligated to him, and thereafter voted with the "king's friends." But parliament grew resentful of this practice and eventually undertook to get rid of it by passing a statute which provided that any member of the House of Commons who accepted a position of profit from the crown should thereby lose his seat.¹⁵

The new provision. As this statute applied to all newly appointed ministers as well as to other officials of the crown, it involved a serious interference with the course of public business. For whenever a new ministry took office it became necessary for several of them (those who were members of the House of Commons) to go back to their respective constituencies and get re-elected. And this even though they had been elected to the House only a few days before. So the requirement was suspended by act of parliament during the First World War, and in 1926 it was abolished altogether.

Other considerations which influence the prime minister in making his selections. In forming his cabinet the prime minister must also have regard for geography. It would be a grave offense to choose only Englishmen, Scotsmen, or Welshmen. Sentiment and tradition demand that recognition shall be given to the various parts of the United Kingdom. As a matter of good politics the prime minister must strive to make his cabinet as broadly representative as possible—having regard to sectional, social, religious, and economic affiliations. This high-grade patronage, for such it is, must be distributed in such a way as to strengthen the prime minister's party or coalition of parties. It is an unwritten law of British politics, moreover, that men who have served in previous ministries of the same political party should be offered ministerial posts if they are still in active political life. Likewise it is understood, quite naturally, that the men who have been the most effective parliamentary critics of an outgoing cabinet are entitled to places in the incoming one. And recognition must of course be given to different factions in the party if there are such, as is sometimes the case. This, as may readily be seen, sometimes leads to embarrassment, for it occasionally happens that one prominent member of parliament is disinclined to enter the ministry unless another is kept out.

Every ministry is to some extent a compromise. All in all, the process of making a new ministry gives opportunity for the exercise of all the tactical skill that a new prime minister can command.¹⁶ He has only a limited number of ministerial offices to pass around—with an almost unlimited number of receptive souls waiting for a call to serve their country. So every ministry is to some extent a compromise. Never does it represent exactly what the prime minister would do if he had a free hand. His problem is to select from among

¹⁵ 6 Anne, Chapter 7.

¹⁶ See the interesting chapter on "The Formation of a Government" in W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 47-69.

the availables those who he thinks can be woven into a unit. As one commentator has said, he is like a child trying to construct a figure out of blocks which are too numerous for the purpose and which are not of shapes or sizes to fit perfectly together.

Distributing the portfolios. Nor are the prime minister's worries confined to the problem of determining who shall be included in the ministry. The distribution of offices, or portfolios as they are called, must also be made among those who are taken in. Who shall be made chancellor of the exchequer or secretary of state for foreign affairs—the two most important positions in the cabinet? And what ministers will have to be content with a designation as junior lord of the treasury, civil lord of the admiralty, or charity commissioner? In deciding such questions the prime minister takes into account each minister's experience, his skill as an administrator, and his ability to hold his own in parliament whenever the work of his department is criticized by the opposition, as it is bound to be. Some heed must also be paid to each minister's own preferences, especially in the case of those who are to occupy the higher positions.¹⁷

Has the monarch any influence upon the selections? Must the prime minister also take into account the wishes of the king in choosing his ministerial associates and assigning them their offices? Under ordinary conditions the answer is no. It is hardly conceivable that a British king would nowadays decline to accept anyone whom his prime minister insisted upon having in his cabinet. But it has not always been so. Queen Victoria on one occasion criticized a prime minister's selections, and is believed to have successfully objected to the inclusion of certain statesmen who were distasteful to her. She claimed, and exercised, a woman's privilege. Today a monarch would be very loath to inject his own personal feelings into the process of cabinet-making.

What ministers constitute the cabinet. The size of the cabinet is not fixed by law but by usage. By custom, ministerial posts such as those occupied by the chancellor of the exchequer, the lord chancellor, the lord president of the council, the secretary of state for foreign affairs, the minister of defence, and the secretary of state for the home department—these normally carry cabinet rank with them. Other portfolios, such as those held by the secretary of state for Scotland, the secretary of state for commonwealth affairs, and the minister of labor and national service, are usually included, while some others, such as the minister of supply or the minister of transport, are occasionally brought in. The remaining ministers (including undersecretaries and parliamentary

¹⁷ Occasionally one or more ministers "without portfolio" are appointed, that is, ministers who are not assigned to any regular administrative posts, but are free to assume any tasks that the prime minister requests them to do; however, this practice has been largely restricted to wartime ministries.

secretaries) are left out, although there is nothing to prevent their being summoned to cabinet meetings if the prime minister at any time desires their presence.

When the prime minister has completed his list he takes it to the king, who accepts it as a matter of course and announces the ministerial appointments as having been made by the crown. Then the list is published in the official *London Gazette* and the new appointees are sworn into office at once. As already mentioned, however, they are sworn as members of the privy council (unless they are already members of that body), not as ministers or cabinet ministers. And they remain privy councillors for life, not merely while they remain ministers.

Historical Background. On the origin and growth of the privy council, the ministry, and the cabinet there is much material in J. F. Baldwin, *The King's Council in England during the Middle Ages* (New York, 1913); A. V. Dicey, *The Privy Council* (London, 1887); Edward R. Turner, *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries, 1622-1784* (Baltimore, 1932); Mary T. Blauvelt, *The Development of Cabinet Government in England* (New York, 1902); and M. Fitzroy, *The History of the Privy Council* (London, 1928). The various books relating to the history, powers, and functions of the crown, listed at the close of the preceding chapter, deal with the evolution of the royal advisory bodies.

Prime Ministers and the Process of Cabinet-Making. Strange to say, no book has yet been written on the office of prime minister in Great Britain, its origin, development, and present-day influence. But Clive Bigham, *The Prime Ministers of Britain* (New York, 1922), and F. J. C. Hearnshaw, *British Prime Ministers of the Nineteenth Century* (London, 1930), provide an informing and readable series of biographical sketches. Mention should also be made of the last-named author's book on *The Political Principles of Some Notable Prime Ministers of the Nineteenth Century* (London, 1930). The process of cabinet-making is described in A. B. Keith, *The British Cabinet System* (London, 1940); W. R. Anson, *Law and Custom of the Constitution* (4th edition, 2 vols., London, 1922-1935), Vol. II, Part I, pp. 108-150; Herman Finer, *The Theory and Practice of Modern Government* (2 vols., New York, 1932), Vol. II, pp. 949-994; W. Ivor Jennings, *Cabinet Government* (2nd edition, Cambridge, 1951); and Wangteh Yu, *The English Cabinet System* (London, 1939).

Biographies and Memoirs. Illuminating material may also be drawn from the biographies and memoirs of British prime ministers—for example, W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli* (6 vols., London, 1910-1920); John Morley, *Life of W. E. Gladstone* (3 vols., New York, 1903); Sir Philip Magnus, *The Life of Gladstone* (London, 1954); André Maurois, *Disraeli* (London, 1937); Hesketh Pearson, *Dizzy, Life and Personality of Benjamin Disraeli* (London, 1951); Lady Gwendolen Cecil, *Life of Robert, Marquis of Salisbury* (4 vols., London, 1921); E. T. Raymond, *Life of Lord Rosebery* (London, 1923); Harold Spender, *Life of Campbell-Bannerman* (London, 1923); J. A. Spender

and C. Asquith, *Life of Lord Oxford and Asquith* (2 vols., London, 1932); H. H. Asquith, *Fifty Years of Parliament* (2 vols., London, 1926) and *Memoirs and Reflections* (London, 1928); Harold Spender, *The Prime Minister: Life and Times of David Lloyd George* (London, 1920); Thomas Jones, *Lloyd George* (London, 1951); H. H. Tiltman, *James Ramsay MacDonald* (London, 1931); Benjamin Sacks, *J. Ramsay MacDonald in Thought and Action*, (Albuquerque, 1952); Sir Charles Petrie, *The Chamberlain Tradition* (London, 1938) K. Feiling, *Life of Neville Chamberlain* (London, 1946); Lewis Broad, *Winston Churchill* (3rd edition, New York, 1952); and the autobiography of Winston Churchill, now in process of publication. A full bibliography of such writings may be found in Appendix V. of W. Ivor Jennings, *Cabinet Government* (mentioned above).

CHAPTER VI

Cabinet Functions and Ministerial Responsibility

The first duty of a government is to live. It has no right to be a government at all unless it is convinced that if it fell the country would go to everlasting smash.—Arnold Bennett

The heir to power. During the past half century the functions of government have been rapidly multiplying. There is more work to be done than there used to be. This has greatly increased the powers and influence of the administrative authorities, those whose duty it is to carry out the will of the people as expressed to the legislative body—in other words the ministers and their subordinates. As a result of this the importance of the administrative authorities in every governmental system is not easy to overestimate. Englishmen refer to the cabinet as “the buckle that binds” all arms of the government together. It has been called the keystone of the political arch and the helm of the ship of state. There is difficulty in finding a metaphor that will do it full justice.

General functions of the cabinet. In discussing the work of the British cabinet a distinction should be made between individual and collective functions. Each member of the cabinet is responsible for the conduct of some branch of the national administration. These branches of administration correspond, for the most part, to the departments which are headed by members of the president’s cabinet in the United States. Then, in a collective sense, the members of the cabinet form the great executive committee of parliament. They prepare its business, guide its deliberations, and keep it at all times under control.

The prime minister’s primacy. Both classes of functions are performed by the cabinet under the direction of the prime minister. He is supposed to exercise a general supervision over the work of his colleagues. He is the

umpire in the case of any differences of opinion among them. When he and one of his ministers find themselves unable to agree, it is the minister who resigns. On the other hand the prime minister cannot ride roughshod over his associates. He is their leader, not their boss. He must carry them with him, for they have friends in the House of Commons and dissension in the cabinet would soon spread to that chamber. Yet his power is enormous—so long as he remains prime minister. On his advice the royal prerogative lives and acts as powerfully as it did in the days of the Tudors. In theory a prime minister has no right to tell the home secretary or the postmaster-general that this or the other thing must be done. But he can advise the crown to dismiss any minister and select a new one. And he can do this very delicately by writing, as a prime minister once did to Charles James Fox, that "the king has been pleased to issue a new commission for the office of lord high treasurer in which I do not perceive your name." As a rule, of course, he does not have to go so far. Difficulties can usually be ironed out before resignations are in order.

The responsibilities of the prime minister, as prime minister, are so extensive that he usually contents himself with a cabinet office which entails no arduous administrative duties—namely, that of first lord of the treasury. In emergent situations, however, he may take one of the other cabinet portfolios as well. Both Sir Winston Churchill and Clement Attlee served as minister of defence as well as first lord of the treasury while in office as prime minister. As first lord of the treasury, the prime minister is titular head of the treasury board, but as will be explained in the next paragraph, this post requires little or none of his energies.

The chancellor of the exchequer. Next to the prime minister, the chancellor of the exchequer has usually been the most outstanding member of the cabinet. In recent years, however, the urgency of matters affecting the international relations of the United Kingdom has given unusual prominence to the secretary of state for foreign affairs and to the minister of defence. Nevertheless public administration is largely a matter of opening or closing the public purse, and the chancellor is the real head of the British treasury, although nominally this institution is controlled by a treasury board of five members.¹ This treasury board is one of the numerous shams in British administration. It never meets except to pass upon some formal business, and even at that its formal sessions are infrequent. Virtually all its functions are turned over to the chancellor of the exchequer and his staff. The chancellor's duties include practically all those which pertain to the secretary of the treasury at Washington, and more besides. He has charge of collecting the revenues and

¹ The first lord of the treasury (who is always the prime minister), the chancellor, and three junior lords. For a full account of the treasury, its organization and workings, see T. L. Heath, *The Treasury* (London, 1927). The chancellor of the exchequer is also "second lord of the treasury," but this title is rarely used.

of paying out all funds appropriated by parliament. He has duties connected with the currency and the government's relations with the Bank of England.

His work on the budget. In addition he prepares the annual budget. This huge array of estimates, forecasting revenues and expenditures for the ensuing fiscal year, is laid before the cabinet and after approval by that body is submitted to the House of Commons. The chancellor of the exchequer is always a member of this House because every financial measure, including the budget, must be first considered there. In connection with the introduction of the budget the chancellor of the exchequer makes his annual "budget speech" which sets forth any changes in the financial plans of the government. It is from this speech that the public gets its first definite information concerning new taxes and other proposed changes in the government's fiscal policy. Hence the chancellor must needs be a clear, ready, and fluent speaker, able to hold his own on the floor. This is even more important than a knowledge of public finance, for the chancellor can obtain from his subordinates all the expert advice that he may require in financial technique.²

The lord chancellor. The chancellor of the exchequer should not be confused with the lord chancellor. The lord chancellor of Great Britain occupies a post which has no close analogy in the United States. He presides in the House of Lords and is always a member of that body. This does not mean that a commoner can never be chosen to the office; any British subject may be chosen and then raised to the peerage. The post of lord chancellor is the highest office in the British judicial system, for its incumbent is the titular head of the Court of Appeal, although in practice he rarely sits there. But he does actually preside at sessions of the law lords when they exercise the judicial functions of the House of Lords.³ He also recommends to the crown the appointment of judges in the higher courts and himself appoints the justices in the lower tribunals. To that extent he performs duties which are somewhat analogous to those of the attorney-general in the United States.

The "principal secretaries of state." One reads in commentaries on British government that the cabinet contains several secretaries of state.⁴ That statement is literally true, but it is apt to create a misleading impression in an American mind. The British cabinet does not contain several secretaries of state in the American sense. It is merely that the term "secretary of state" forms part of the title in the case of several principal ministers whose functions cover a varied range.

1. Foreign affairs. First, there is the secretary of state for foreign affairs.

² For a discussion of budget procedure in the House of Commons, see below, pp. 216-225.

³ See below, Chapter viii.

⁴ The secretaries of state for foreign affairs, for the home department, for war, for Scotland, for the dominions, for the colonies, and for air. Not all are in the cabinet.

This minister is head of the British Foreign Office.⁵ As such he is the official adviser of the crown in its dealings with foreign powers; he supervises the conduct of all diplomatic relations, negotiates treaties, and recommends appointments in the diplomatic service. His duties correspond in a general way to those of the secretary of state at Washington. Due to the vastness and complexity of Great Britain's foreign interests the position of foreign secretary is one of great importance, so much so that the prime minister has occasionally taken this portfolio into his own hands. But the British foreign secretary is not necessarily, like the American secretary of state, the senior member of the cabinet.

2. Defence. The minister of defence occupies a post which was created in 1947 through the reorganization of the war, navy, and air departments. He has general supervision over all three services. The immediate administration of the army, however, remains under the secretary of state for war, and naval affairs continue to be in charge of a board headed by the first lord of the admiralty. There is also an air council, of which the secretary of state for air is the directing hand. It has jurisdiction over civil aviation as well as over the Royal Air Force. These three officials rank as ministers but are not members of the cabinet.

3. Economic affairs. Another cabinet post, recently created, is that of minister for economic affairs. The establishment of this ministry was dictated by the critical economic situation in which the United Kingdom found itself during the years following the close of the Second World War. Its responsibilities include economic planning and the general supervision of the various controls which the British government, during recent years, has been extending over the industrial activities of the nation. Some economic supervision over commerce and navigation is also exercised by the president of the board of trade. As a temporary measure the post of minister for economic affairs has been combined with the chancellorship of the exchequer, thus providing a joint portfolio which has a wide range of functions affecting all phases of British economic life.

4. Home affairs. Some other British administrative departments find no close analogy in the American scheme of national administration. The secretary of state for the home department, or home secretary as he is more commonly called, has to do with many matters of domestic administration, such as the receiving of petitions for presentation to the crown, the maintenance of peace and order within the kingdom, the enforcement of factory laws, the inspection of municipal police in the boroughs or cities, the direct control of the London metropolitan police, the naturalization of aliens, and the supervi-

⁵ J. Tilley and S. Gaselee, *The Foreign Office* (London, 1933).

sion of prisons. He also has general charge of the registration of voters and the holding of parliamentary elections. Finally, the home secretary advises the crown in the exercise of its pardoning power.⁶

5. Dominions, colonies, and India. The secretary of state for the colonies has charge of the relations between the home government and the governments of the various colonies. Originally the Colonial Office had to do with the self-governing dominions as well, but in 1925 a separate office, the Dominions Office, which later became the Office of the Secretary of State for Commonwealth Relations, was created to deal with them.⁷ The relations between London and the governments of Canada, Australia, South Africa, New Zealand, Ceylon, India, and Pakistan are carried on through the Office of Commonwealth Relations. Jamaica, Malta, Hongkong, and the rest are dealt with through the Colonial Office. India was under the supervision of a separate department, the India Office, headed by a secretary of state for India, until 1948, but the present relations between India, Pakistan, and the British government will be explained in a later chapter.⁸ There is also a secretary for Scotland, and since 1926 he has ranked as a principal secretary of state.

Other cabinet ministers. There is no unified department of justice in Great Britain, as in continental countries. The work is divided among four ministers, namely, the lord chancellor, the home secretary, the attorney-general, and his colleague, the solicitor-general. The duties of the other ministers, such as the ministers of labor and national service, health, and transport, the post-master-general, the minister of education, the president of the board of trade, the minister of agriculture and fisheries, the ministers of fuel and power, town and country planning, national insurance, food, pensions, works, and civil aviation, and the lord president of the council, are indicated by the designations of their respective offices, save in the case of the minister of health.⁹ His administrative duties are concerned not only with the maintenance of the public health but with the supervision of poor relief, housing, and local government. His office took over, in 1919, the functions which had previously been performed by the Local Government Board.

The ancillary agencies. In the United States the expansion of governmental administrative functions during recent years has resulted in the creation

⁶ For a full account of home office activities see the monograph by E. Troup, *The Home Office* (London, 1925).

⁷ Although the separation was made in 1925, the two ministries had the same minister at its head until 1930. See G. V. Feddes, *The Dominions and Colonial Office* (London, 1926).

⁸ See below, Chapter xx.

⁹ The Whitehall Series of monographs on the British ministerial departments is intended to explain in detail the work of each—for example, H. L. Smith, *The Board of Trade* (London, 1928); F. Floud, *The Ministry of Agriculture and Fisheries* (London, 1927); L. A. Selby-Bigge, *The Board of Education* (London, 1927), and so on.

of numerous boards, commissions, and "administrations" which are not under the control of any of the regular departments. As will be seen a little later, the same is true in Great Britain, but to a much smaller extent. Most of the new activities undertaken by the British government have been allotted to the existing ministries (labor, health, transport, and so forth). The local trade boards and employment exchanges, for example, have been placed under the Ministry of Labor and National Service. But the government has also assumed responsibility for the systematic organization of electricity supply throughout the country, and it has taken under its wing a monopoly of radio broadcasting, both of which activities have not been placed under any regular department but are handled by special authorities. The nationalization of railroads, coal mines, and other industries has required a further administrative expansion.¹⁰

A confusion of ranks, titles, and offices. Taking it as a whole there is neither symmetry nor logic in the British system of national administration. Various parts of it are the outcome of a long development. Other parts are the result of the vast and rapid increase in governmental activities during the past forty years. There are phantom boards which have no real power and there are boards which have immense authority. An American, accustomed to an administrative organization that can be charted on a blueprint, stands amazed at this welter of first lords and junior lords, principal secretaries and secretaries who are heads of their offices but do not rank as principal secretaries, chancellors, and presidents of boards, ministers of this and that, ministers without portfolio, and commissioners. But the machinery functions, and on the whole it functions well. From time to time proposals have been made to overhaul and simplify it; but nothing save piecemeal reorganization has resulted.

The use of advisory agencies. The British government makes considerable use of advisory boards, commissions, committees, and other agencies. These are of two kinds, temporary and permanent. The former, usually known as royal commissions, are set up to investigate or study some specific matter and make a report thereon. When their reports are presented they go out of existence. The other, or permanent, advisory agencies are made up of citizens who have (or are supposed to have) special qualifications in some designated field such as industry or defence. They may serve in an advisory capacity to the cabinet as a whole or, more often, they are attached to one of the ministerial departments. Their service is continuous, although changes in their membership are made from time to time. It may seem hardly necessary to explain that these agencies, whether temporary or permanent, have no authority to

¹⁰ Among examples of boards which have independent statutory functions but which are connected with one of the regular ministries are the Racecourse Betting Committee, the Central Electricity Board, the Traffic Commission, and the Assistance Board.

direct or control anything. Their functions are purely consultative.

COLLECTIVE FUNCTIONS

The cabinet as a collective organ. So much for the cabinet ministers as responsible individual administrators, as heads of their various departments. As has already been indicated they also form a body with collective functions and responsibility. This cabinet, as British writers often tell us, is the pivot on which the whole political machinery turns. It makes the great decisions. Technically it is merely a committee of the privy council, made up of those privy councillors whom the prime minister chooses to call, assembling at his behest, and discussing only such business as he may permit to come before it. Actually it is the steering wheel of the ship of state. It sets the direction of national policy. In theory it is responsible to the House of Commons for everything that it does; but in reality the House acts in accordance with its leadership and direction.

Cabinet meetings. Regular meetings of the cabinet are held once a week when parliament is in session, usually in the morning or early afternoon hours. In time of war or other emergency the meetings may be held several times a week. Special meetings are convened at the call of the prime minister, and when urgent questions arise they may be held at any hour of the day or night, often on very short notice. It is customary for the cabinet to omit its regular meetings during the parliamentary recess, the members coming together only when needed. The meetings ordinarily take place at the prime minister's official residence, No. 10 Downing Street, or occasionally in the prime minister's room at the House of Commons. There is no fixed quorum; no votes are taken, and no speeches made. The proceedings are quite informal.

Cabinet committees. Members do not sit in any order of precedence; each picks his own seat and occupies it regularly. Smoking at cabinet meetings is strictly taboo, and some ministers have looked upon this as a serious deprivation. Before each regular meeting a batch of papers relating to the business is sent to each member. An important innovation of recent years is the frequent holding of committee meetings at which committees of the cabinet deal with special subjects or groups of subjects. Two committees have now become relatively permanent—one on home affairs and the other on finance. These cabinet committees, of course, have no final powers. They merely report to the whole body. A considerable amount of business is also virtually settled by private conferences between the prime minister and a few of the more influential members before the cabinet meets. It is a tradition, moreover, that the prime minister never consults the cabinet about filling a vacancy in its own ranks, and rarely does he do it about other appointments—for example, to judgeships or governorships of colonies.

The secretariat. Prior to 1917 the cabinet had no secretary and kept no records. This curious omission had continued from the earlier days when the cabinet was a mere clique of the privy council meeting secretly. The prime minister simply jotted down some notes of the proceedings for his own use or for the information of the king. Each member of the cabinet took mental note of matters relating to his own department, for it was an unwritten rule that no one except the prime minister should make any written memoranda at cabinet meetings. The result was that misunderstandings occasionally arose through differences in ministerial recollections of what had been decided. David Lloyd George, who was prime minister in 1917, thought this whole arrangement too loose and unbusinesslike; so he appointed a regular cabinet secretary with the function of putting business into shape for the meetings, keeping the records, and having the custody of all official documents. This secretarial establishment was rapidly enlarged until within a few years it had grown to have more than 100 employees and its expansion evoked much adverse criticism in parliament.

Its present functions. So when a new ministry came into office (1922), the secretariat was greatly reduced in personnel; but it still remains in existence and has apparently become a permanent part of the governmental machine. Its functions and powers have never been defined, but in general it prepares the agenda for cabinet meetings, gathers data for the cabinet and its committees, keeps the records, and does whatever else the cabinet asks it to do. Within the past twenty years it has been asked to do more and more until it is now regarded as the essential mechanism which enables the cabinet system to function in an era when administration has so greatly increased in its complexity. Particularly important is the secretariat's economic section which acts as a coördinating agency over a wide range.¹¹ The head of the secretariat, or his principal assistant secretary, attends cabinet meetings and takes the minutes, but these minutes are not made public. In all respects other than in secretarial service the cabinet holds to its traditional informality.

Cabinet discussions. Most of the cabinet discussions pertain to matters of general policy or to questions which involve the establishment of some important precedent. Routine details which relate to a single department are not usually laid before it. Each minister is supposed to deal with such things on his own responsibility or after conference with the prime minister. A cabinet discussion is not followed by a vote save in very exceptional instances. It does not bind the prime minister. He can advise the crown in the face of an adverse cabinet vote and has done so on more than one occasion.

On the other hand, a prime minister naturally hesitates to act in the face

¹¹ For a discussion of this general topic see Sir John Anderson, *The Machinery of Government* (Oxford, 1945), and Sir Oliver Franks, *Central Planning and Control in Peace and War* (London, 1947).

of cabinet disapproval. The recognition of the Southern Confederacy during the American Civil War was averted by a majority vote of the cabinet against the wishes of the prime minister, the foreign secretary, and the chancellor of the exchequer (Palmerston, Russell, and Gladstone—surely a weighty trio). If a cabinet discussion discloses a marked difference of opinion among the ministers, the usual practice is to leave the question open until some compromise can be reached, for the action of the cabinet, whatever it is, must be outwardly unanimous. No divided counsel can be tendered to the king, nor can the cabinet go before parliament with a division in its ranks. It must act as a unit. If any member, after a decision has been reached, feels that he cannot support this outcome, it is his duty to resign and make way for someone who feels differently. On rare occasions, however, it has been announced that one or more members of a coalition cabinet differed from their colleagues upon some controversial question but would continue in office notwithstanding. This is possible where the issue is not a vital one.¹²

The cabinet's leadership in legislation. The most important collective function of the cabinet is to formulate the policy of the nation and the legislative program for each session of parliament. The various items in this program are then introduced as government measures with the prestige of the ministry behind them. Not only this but the measures are advocated, explained, and defended upon the floors of both chambers by members of the ministry, and the votes of the party majority are whipped into line to put them through. Not all bills are brought before parliament by the cabinet, of course; but practically all measures of general importance must come up with ministerial approval or at least with an assurance of ministerial neutrality; otherwise they have little or no chance of being passed by the House of Commons.

So, when the British prime minister or a member of his ministry announces that a measure will be brought in to nationalize the coal mines, or to give self-government to India, or to reduce the income tax—this announcement means that such action is almost certain to be taken. If the ministers do not change their minds, or decide to compromise, parliament must either accept their program or get a new ministry. Sometimes, of course, the ministers temper their demands, or even reverse themselves, when they find more opposition than they expected. A good example is afforded by Foreign Secretary Sir Samuel Hoare's proposed olive branch to Italy (1935) which was regarded by the opposition as condoning that country's assault on Ethiopia. Apparently this policy had been endorsed by the cabinet, but when a storm of criticism broke it retreated and left the secretary of state for foreign affairs out on a

¹² For an illustration of this "agree to disagree" procedure see N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 58-64.

limb. He generously helped the cabinet save its face by voluntarily tendering his resignation as one of its members.

Its contrast with the American cabinet in this respect. Right here, in fact, is the most conspicuous difference between the English and the American methods of lawmaking. In the United States the cabinet does not have any official responsibility for the preparation of government measures, and indeed Congress is disposed to resent being told by the executive what it ought to do. It objects to "must" legislation even though members supporting the administration do not always voice their resentment openly. Members of the American cabinet do not sit in either house of Congress and hence cannot direct the debates as the English ministers do. They have no certain assurance that a majority in Congress will stand behind anything that they propose.

But in Great Britain virtually all important legislation is planned and drafted by the ministers, introduced by them, and put through the House of Commons at their insistence. This does not mean, however, that the British system is superior to the American. Both methods have their merits and their shortcomings. The British plan makes for firm and effective leadership, but it also results in a good deal of legislative dictatorship. It enables a few ministers of the crown to put laws on the statute book which parliament at times would not favor if it felt free to make its own choice.¹³ The American plan occasionally results in rebuffs to the chief executive, as when Congress in 1937 refused to accept Roosevelt's proposal to "reform" the United States Supreme Court. Sometimes, again, the American procedure leads not only to executive rebuffs but to delays and unsatisfactory compromises. On the other hand, it has the merit of providing a safeguard against executive aggrandizement.

Ministerial responsibility. Much has been written about ministerial responsibility as it exists in British government. No principle is more firmly established and none is of more far-reaching importance. It is not a simple principle, easy to understand, for it has a threefold application:

Its three phases: 1. Responsibility to the king. First of all, the English ministers are responsible to the king. This is, for the most part, a merely technical responsibility. The king cannot dismiss a member of the cabinet in the way that the president of the United States can do it. An English minister, so long as he possesses the confidence of the premier and the House of Commons, could not be ousted by the king without bringing the whole mechanism of the government to a standstill. For the entire cabinet would resign in protest; a majority in the Commons would support its action; a general elec-

¹³ On this point see the discussion of "Cabinet Dictatorship" in Sidney and Beatrice Webb, *Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), pp. 71-74; also Lord Hewart, *The New Despotism* (New York, 1929), especially Chap. vi.

tion would have to be held; and the king would be giving a hostage to fortune. So ministerial responsibility to the king is not a very serious affair. Yet there is a measure of such responsibility. The monarch must be kept informed. Queen Victoria once rebuked Lord Palmerston by writing to him that "she expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based on that intercourse." This royal right to be kept informed by the ministry, through the prime minister, is one that is recognized as a matter of courtesy, if not of legal obligation.

2. Responsibility of the ministers to one another. Second, the members of the ministry are responsible to one another. This is necessarily so because solidarity is the essence of the British ministerial system. So it is a matter of each for all and all for each. The fault of one minister may bring the wrath of the Commons upon the ministry as a whole. For this reason every minister is constrained, not merely as a matter of prudence but of honor, to seek the opinion of his colleagues before taking any action that might evoke widespread criticism. This principle of intracabinet responsibility was definitely established in 1851 when Lord Palmerston, without consulting his colleagues, expressed to the French ambassador his approval of a *coup d'état* which had taken place in France. For doing this Palmerston was dismissed from the ministry. Much more recently, in 1922, a secretary of state for India was forced to leave the cabinet because he made public an official dispatch without consulting his colleagues.

On the other hand, so long as a member of the cabinet acts in accord with a policy which has been approved, he can feel assured of unified support from this body under normal circumstances. His fellow ministers will stand solidly behind him. To drive him from office would necessitate forcing the whole ministry out. But all this is subject to the qualification that even ministers of the crown are human beings, with the usual frailties of mankind, who will sometimes, under sufficient pressure, leave a colleague in the lurch rather than face the public wrath themselves.

3. Responsibility to the House of Commons. Finally, and most important, the members of the ministry are responsible to the House of Commons. That is what the term "ministerial responsibility" really means. There is no statutory requirement that a ministry shall go out of office whenever it shows itself unable to secure and maintain the support of a majority in the House. But by a custom which has now prevailed for over 200 years it is under obligation to do so. The ministry must always be able to demonstrate, by the votes of a majority in the existing House of Commons, or by success at a general election, that it possesses the confidence of the country. Loss of this confidence means loss of office.

How a ministry can be ousted. There are various ways in which the House of Commons may show its lack of confidence in the ministry and thereby force it either to resign or go to the country. When the financial estimates are under consideration the House may vote to reduce the salary of a minister. The principle of solidarity would then require his colleagues to defend him against this attack. Or the House may reject some government measure. An amendment to such a measure does not necessarily imply want of confidence unless the cabinet inflexibly opposes the amendment and makes an issue of it. Amendments brought forward in the House are often accepted by the minister in charge of the bill. In 1937, for example, the chancellor of the exchequer, Mr. Neville Chamberlain, laid certain tax proposals before the House with the cabinet's approval. But unexpected opposition flared up and the cabinet backed down, thus avoiding what might have been a want-of-confidence vote.

Again, the House may pass some bill which the cabinet opposes, and the issue may become one of confidence in the government. Finally, if the House is dissatisfied with the cabinet's general policy, without reference to any particular measure, it can at any time pass a resolution of censure or disapproval. British cabinets, as a matter of history, have rarely been forced to resign during the past 100 years by reason of an adverse vote in the House of Commons. They have gone out of office, for the most part, as the result of adverse action by the people at the polls. On the other hand, a decision to dissolve parliament and call a general election has sometimes been dictated by signs of a waning hold on the House. Snap votes and mishaps due to the absence of ministerial supporters do not entail the cabinet's resignation. The cabinet has at all times the privilege of demonstrating, by proposing a resolution of confidence, its control of a majority.

The cabinet's right of appeal to the people. It is the privilege of the cabinet, when it finds itself defeated or faced by defeat in the House, to ask for "an appeal to the country." In other words the prime minister can request the king to dissolve parliament and order a general election. It is contended that the king might refuse to grant this request, provided he could find somebody else able to carry on as prime minister with a majority behind him. But that is a situation which, in the nature of things, would almost never arise. If an election is ordered, the old ministry continues in office during the campaign, but if the result of the polling is unfavorable it does not usually wait for parliament to assemble and vote want of confidence. The practice is for the ministers to hand over their seals of office and make way as quickly as pending business can be cleaned up. This is a matter of a few days, or, at most, a few weeks. Thereupon the king sends for the leader of the victorious party and asks him to form a new ministry. This summons, of course, is not unexpected, and

the new prime minister usually has the organization of his cabinet lined up before the royal summons arrives.

Coalition cabinets. Ordinarily the cabinet is made up of members drawn from one political party, but when no party possesses a clear majority in the House of Commons, or in times of national emergency when it is desired to have all the parties work together, then a coalition cabinet is formed. During the past forty years there have been six coalition ministries, or national ministries as the Conservatives have preferred to call them.¹⁴ When the First World War began in 1914 a Liberal ministry headed by Mr. Asquith was in power. A year later, when the immensity of the struggle became recognized, the prime minister suggested that his parliamentary opponents should be represented in the cabinet, and they accepted. So a coalition ministry, made up of Liberals, Conservatives, and Labor members, was selected. Mr. Asquith continued as prime minister until 1916 when he was replaced by Mr. Lloyd George. This coalition continued for a time after the war was over, but went to pieces in 1922.¹⁵ Thereupon a general election was held and the Conservatives were successful. But their tenure of power was brief, for they went to the country in 1923 on the issue of inaugurating a protective tariff and were defeated.

The minority cabinet of 1923-1924. The general election of 1923 presented a new problem of ministerial responsibility, for no one of the three parties (Conservatives, Liberals, and Labor party) now controlled a majority in the Commons. Ramsay MacDonald, the leader of the Labor party, was summoned to construct a ministry and for nearly a year a Labor ministry was able to carry on, although it did not have a unified majority of the Commons behind it. This was because the Liberals gave it support on appropriation bills and on some other important measures.

Cabinet changes, 1924-1931; further changes, 1931-1951. In the autumn of 1924 the Liberals withdrew their support and thereby forced the prime minister to ask for a new election. As a result of this election the Conservatives were returned to power with a majority over the other two parties combined, and for a time the old arrangement of a ministry supported by a solid majority was restored. But in 1929 the time arrived for another general election and once more no single party obtained a majority in the House. Again the Labor party was given the reins, and in 1931 Mr. MacDonald succeeded in forming a three-way "national" coalition, which continued under his leadership until 1935, although its support came chiefly from the Conservatives. In the early summer of that year Mr. MacDonald gave up the prime

¹⁴ Asquith, 1915-1916; Lloyd George, 1916-1922; MacDonald, 1931-1935; Baldwin, 1935-1937; Chamberlain, 1937-1940; Churchill, 1940-1945.

¹⁵For some interesting data relating to this coalition cabinet see E. M. Sait and D. P. Barrows, *British Politics in Transition* (New York, 1925), Chap. ii.

ministership and was replaced by the Conservative leader, Mr. Stanley Baldwin. Although the Conservatives, at the ensuing general election, gained more seats than the other parties combined, it was deemed advisable to continue a "national" ministry, in form at least, by including representatives of party groups which called themselves the National Labor and National Liberal parties. These were distinct from the regular Labor and Liberal parties. Neville Chamberlain succeeded Baldwin as prime minister in 1937 and then gave way to Winston Churchill in 1940. The latter drew into his ministry representatives from the regular Labor and Liberal parties and throughout the war maintained what could be called a truly "national government." But shortly after the close of hostilities in Europe the Labor party withdrew its support, thus forcing a general election at which it succeeded in gaining, for the first time, a clear and ample majority in the House of Commons. For the first time in twenty-one years, therefore, the ministry was now drawn from the ranks of a single party. Thus constituted, the Attlee ministry proceeded to carry into effect some of the principal features in the program of the Labor party. At the general election of 1950 the Attlee government succeeded in retaining its hold on the House of Commons but by a very slender majority. Because of this, another general election was held in October, 1951. This time the Conservatives were returned to power by an almost equally small margin (twenty-six seats out of 625). This result was accomplished despite an over-all popular majority for Labor of about 200,000 votes.

Ministerial responsibility and the two-party system. Ministerial responsibility does not necessarily postulate a two-party system. It can be maintained, after a fashion, when there are three or more party groups in the legislative body, but the principle operates more satisfactorily when there are only two parties, one controlling the government and the other constituting "the opposition." Parliamentary government works best, indeed, when the ministry has a solid, working majority behind it, but not too large a majority. A strong, united, vigorous opposition keeps a ministry on its mettle and makes its responsibility real. The history of parliamentary government indicates that cabinets which are formed from a single party, and are supported by a not-too-large majority, do better work than those which have to conciliate supporters from other groups. With the decline of the Liberal party to almost negligible proportions in recent years it would seem likely that the two-party system is once again to become the dominating feature of British politics.

General. The organization, functions, and responsibility of the cabinet are dealt with in all the treatises and textbooks on English government, for example, Anson's *Law of the Constitution* (see below, p. 136); Lowell's *Government of England*, Vol. I, chaps. ii-iv; Ogg's *English Government and Politics*, chaps. vi-ix; Marriott's *English Political Institutions*, chaps. iv-v; J. J. Clarke's *Outlines of Cen-*

tral Government (10th edition, London, 1943); Low's *Governance of England*, chaps. ii-iv; Courtney's *Working Constitution of the United Kingdom*, chaps. xii-xiii; and Bagehot's *English Constitution*, chaps. i, vi, viii-ix.

In addition to these general works special mention should be made of W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 70-113; B. Schwartz, *Law and the Executive in Britain* (New York, 1949); L. S. Amery, *Thoughts on the Constitution* (Oxford, 1947); Sir John Anderson, *The Machinery of Government* (Oxford, 1945); Sir Oliver Franks, *Central Planning and Control in Peace and War* (London, 1947); Sir John A. R. Marriott, *Mechanism of the Modern State*, Vol. II, chap. xxv; Lord Hewart, *The New Despotism* (New York, 1929); Arthur B. Keith, *The British Cabinet System, 1830-1938* (London, 1939); K. B. Smellie, *A Hundred Years of English Government* (2nd edition, London, 1950); Ramsay Muir, *How Britain is Governed* (4th edition, London, 1940), chap. iii; and E. C. S. Wade and G. G. Phillips, *Constitutional Law* (3rd edition, London, 1946).

Discussions of the British cabinet system from a foreigner's point of view may be found in P. H. Sirieux, *Le régime parlementaire anglais contemporain* (Paris, 1935); W. Hasbach, *Die parlamentarische Regierung* (Berlin, 1919); Robert Redslob, *Le régime parlementaire* (Paris, 1924); and Hermann Savelkoul, *Das Englische Kabinett System* (Munich, 1934). An old book, still possessing value, is R. H. Gretton, *The King's Government: A Study in the Growth of the Central Administration* (London, 1913).

Special Studies. Small volumes in the Whitehall Series deal with the organization and work of the various ministerial departments. A general survey of them all (now somewhat out of date) is given in the initial volume of the series—C. Delisle Burns, *Whitehall* (London, 1921). John Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933), is a good study of an important subject. See also Sir G. F. M. Campion et al., *British Government since 1918* (London, 1950). A volume on *The British Commonwealth at War*, edited by William Y. Elliott and H. Duncan Hall (New York, 1943), gives some information concerning the changes due to war conditions. Some significant official documents and other papers are reprinted in Robert K. Gooch, *Source Book on the Government of England* (New York, 1939).

Biographies and Memoirs. Not only prime ministers but scores of other ministers have written autobiographies and memoirs or have had their biographies written. This has provided a rich depositary of interesting material concerning the day-by-day workings of the ministerial system. From the vast array of such writings only a few can be mentioned here: G. M. Trevelyan, *Lord Grey of the Reform Bill* (New York, 1952); W. S. Churchill, *Lord Randolph Churchill* (2 vols., New York, 1906); Lord Haldane, *Autobiography* (London, 1929); H. A. L. Fisher, *James Bryce* (2 vols., London, 1927); M. A. Hamilton, *Arthur Henderson* (London, 1938); Philip Snowden's *Autobiography* (2 vols., London, 1934); Keith Feiling, *Life of Neville Chamberlain* (New York, 1946); Trevor Evans, *Bevin of Britain* (New York, 1946); and Francis Williams, *Ernest Bevin* (London, 1953). Others may be found in the *Guide to Historical Literature* (New York, 1931), pp. 559-560. Nor should one omit to mention H. Begbie's *Mirrors of Downing Street* (revised edition, London, 1923), which was widely read both in England and in America at the time of its publication.

CHAPTER VII

The Executive Departments and the Civil Service

Bureaucracy has become, during the last century, and especially during the last generation, a far more potent and vital element in our system of government than the textbooks realize. It has, indeed, become the effective and operative part of our system. The power of this bureaucracy, the permanent civil service, is to be found not only in administration, but also in legislation and finance: it not only administers the laws, it largely shapes them; it not only spends the proceeds of taxation, it largely decides how much is to be raised and how it is to be raised.—Ramsay Muir

Growth of administrative functions. Administrative work has increased greatly in all countries during recent years. This has led to the multiplication of departments, bureaus, offices, commissions, and boards: their total number is everywhere much greater than it was a quarter of a century ago. The ten regular executive departments in the national government of the United States now find themselves far outnumbered by the host of federal administrative agencies which have been called into existence, especially during the past twenty years. It used to be said that the American national administration was a planned affair, with a certain amount of symmetry embodied in it, while the English executive agencies had grown by unplanned accretion, with a resulting confusion of names and relationships.

And the elaboration of administrative machinery. That statement is no longer so close to the realities as it used to be. It is true that the regular executive departments in the United States (the heads of which constitute the President's cabinet) all stand on a common footing, were created in the same way, although at different times, and are alike in their relationship to the nation's chief executive. The various departments which are headed by

cabinet ministers in England, on the other hand, have no uniformity of nomenclature, were created in different ways, and are by no means on a common footing. The treasury, for example, exercises a considerable measure of control over all the others. But when one passes outside of the circle of what may be called the "cabinet departments," a very similar situation exists in both countries. In both there has developed a vast network of nondepartmental machinery consisting of boards and bureaus, commissions and committees, and even public corporations organized to help the government do its work.

The noncabinet departments. In the preceding chapter of this book a brief outline of the organization and functions of the British "cabinet departments" was given. But there are more ministers and departments outside the cabinet than in it. Prominent among these are the postmaster-general, the minister of works, the minister of pensions, the attorney-general, and the minister of fuel and power. Their functions, in a general way, are suggested by their titles. There are also eight or more undersecretaries of state associated with the eight principal secretaries; while nearly a score of parliamentary secretaries deal with such branches of administration as trade, transport, mines, overseas commerce, agriculture, labor, food, education, and health. In addition there are several other officers of similar rank, for example, the financial secretary and the civil lord of the admiralty, the assistant postmaster-general, the financial secretary to the war office, and various others who are known as "parliamentary private secretaries." All of these rank as members of "the government," but are not members of the cabinet.

The new agencies. Nor do the ministries, big and little, cover the entire field of public administration in Great Britain. New agencies have had to be provided to meet new needs and old ones have had to be adapted or expanded. As in the United States, this expansion of administrative machinery has been in accordance with no fixed plan, and the result in both countries has been the same—a formidable array of administrative agencies, created one at a time to meet specific problems, piling up on each other's heels, with duplication of effort, overlapping of functions, and no clear boundaries of jurisdiction between them.¹ There is need for administrative reorganization in Great Britain as in the United States, but in both countries the task of effecting it is a next to impossible one. For every ministry, section, board, office, or public corporation becomes a vested interest on the day that it is established. All those connected with it, as well as their friends and the friends of their friends, will oppose to the last ditch any attempt to change its status, its powers, or its relations with other administrative agencies.

¹ These agencies are so continually changing that a list of them, if accurate and inclusive today, would be out of date a few months later. There is in Great Britain nothing that corresponds closely to the *U.S. Government Manual*, but a list of the numerous administrative agencies can conveniently be found in *Whittaker's Almanac*, published annually.

Administrative legislation: why we have it. Both Great Britain and the United States have prided themselves upon maintaining "a government of laws, not of men." But in neither country is this boast any longer true. Government on both sides of the Atlantic has been becoming more and more a government of men, that is, of government by executive order rather than by law, by decree rather than by deliberation. This development has been inevitable because no parliament or congress, however diligent, could possibly find time to supply all the detailed legislation that has been demanded in recent years. Much of this has been of a character so intricate and technical that no ordinary legislator could understand it. So legislative bodies in English-speaking countries have been rapidly adopting the practice of passing laws in general terms and then leaving to the administrative authorities the job of filling in the detailed provisions.²

Its limitations. It is true, of course, that orders-in-council, departmental regulations, and other decrees are not supposed to go beyond the bounds of the statutes; but the terminology of a statute can usually be stretched as the occasion demands. Within the bounds of a general law which authorizes the crown-in-council, or an individual department, to make appropriate rules and regulations, there is a good deal of leeway. Complaint is frequently heard in England that parliament is merely handing back to the crown the powers which it battled for centuries to take away from the king. The answer is that giving power to the crown does not mean restoring authority to the king, for the crown is now the servant of parliament. Whatever authority parliament delegates to it may be taken away at any time. Incidentally it should be mentioned that while the courts in Great Britain cannot declare any act of parliament unconstitutional, they can and do invalidate orders-in-council or departmental regulations if they find that those who issue them are exceeding their authority.³

Administrative justice. Great Britain and the United States have also prided themselves on the absence of what has been known in the countries of Continental Europe as "administrative justice"—in other words, adjudications made by administrative agencies rather than by the regular courts. But both countries have been building up an elaborate system of administrative justice in recent years. In the United States such bodies as the Interstate Commerce Commission, the Federal Trade Commission, the National Labor Relations Board, and the Federal Communications Commission hold hearings and reach

² In the United States there are literally scores of federal agencies which have authority to make rules, issue orders, and frame regulations affecting the liberties and property of individuals and corporations. The complete list may be found in the *U. S. Government Manual*.

³ The whole subject of administrative legislation is expounded in J. Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933). For a criticism of it see C. M. Chen, *Parliamentary Opinion of Delegated Legislation* (New York, 1933).

decisions which impose penalties. They order some corporation to "cease and desist" from doing this or that, or they take away a radio station's license, or they direct an industry to give its employees a retroactive increase in pay, or do other things which constitute a deprivation of property. Usually, to be sure, what they do is in the public interest, but it is nonetheless a dispensing of justice by the administrative, not by the judicial, authorities.⁴ The same is true in Great Britain. Various administrative agencies receive complaints, hold hearings, hand down their decisions, and enforce their penalties. In many cases there is no right of appeal to the courts such as is usually (although not always) preserved in the United States.

Why it has developed. Administrative justice is becoming a feature of modern government because the regular courts cannot do the work. Much of it involves the hearing and determination of highly technical issues, quite beyond the competence of the most learned judge—not to speak of a jury. Problems of engineering are often involved, or of accounting, or of public utility management. The administrative authorities are experts in these fields, which the regular judicial authorities are not. Moreover, the grist of controversies arising under the administrative regulations is so large that if the regular courts were called upon to settle them the whole judiciary would have to be trebled or quadrupled in size. That solution of the problem would not be an economy nor would it make the system more satisfactory.

The amateur at the top. Many years ago Walter Bagehot wrote in one of his facile epigrams that a minister's business is "not to work his department but to get it worked." That is a self-evident truth. A newly appointed minister takes charge of a department like the British Colonial Office, for example, with jurisdiction extending to the ends of the earth. He is chosen for this post by the prime minister not because he knows much about colonies but because he is an old party war horse, or a nimble debater on the floor of the House, or because someone is needed in the cabinet from the northern counties, or for some other such reason. Between attending sessions in parliament, going to cabinet meetings, keeping all manner of public engagements, and joining in the London social whirl, he has an hour or two a day at his desk to master the problems of a score of scattered areas, big and little, beyond the seas. How does he manage to do it? The answer is that his staff of permanent subordinates, the bureaucracy, the civil service, are the ones who do it for him.

His functions. In a word, the minister's function is not to do the job but to get it done. That, of course, is the task of every great administrator whether in public or in private business. The British minister is responsible

⁴ For a full discussion of this subject see John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927).

for getting this work done right, and he may be called to account by the House of Commons at any time, but the work of his department calls for expert skill—and the minister is not an expert. He lays no claim to that qualification. In most cases he has no professional qualifications for the technical responsibility to which he is assigned.

His deficiencies. The British War Office has been headed at times by a philosopher or a journalist, the admiralty by a merchant or a barrister, and the board of trade by a university professor. One would suppose that in the treasury at least there would be a minister familiar with the intricacies of public finance. But no—the chancellors of the exchequer have often been lawyers, country squires, or professional politicians. “A youth must pass an examination in arithmetic,” Sir Sidney Low once remarked, “before he can hold a second-class clerkship in the Treasury; but the Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learned about figures, and is innocently anxious to know the meaning of ‘those confusing little dots’ when first confronted with the Treasury accounts worked out in decimals.”⁵ Indeed it has sometimes been said that the best qualification for a cabinet position in Great Britain is that the minister shall know nothing at all about its duties. That, of course, is a rather extreme statement, yet technical proficiency does not stand high among the qualifications for a cabinet post. In this connection one recalls the humorous admonition which Sir Joseph Porter, K.C.B., first lord of the admiralty, gives to his shipmates in Gilbert and Sullivan’s *Pinafore*:

*Stick close to your desks and never go to sea,
And you all may be Rulers of the Queen’s Navee!*

The qualities that he needs. This does not mean, however, that members of the British cabinet are men of mediocre attainments. The successful minister, indeed, must be something of a superman. He must be persistent and resourceful, otherwise he would never have risen so far in English politics. He must have a knowledge of public affairs. He must be able to think straight and to express himself clearly, for almost daily he will be called upon on the floor of parliament to answer questions and make explanations. He must be able to decide things quickly and be right at least half the time. He must be able to sift good advice from bad when he hears it. And he must be one who is able to delineate clearly the general lines of departmental policy, letting his subordinates supply the technical skill that is needed to carry these principles into operation. In matters of routine and detail this means, according to one critical observer, that “unless he is either a self-important ass or a man of

⁵ Sir Sidney Low, *The Governance of England* (New York, 1917), pp. 201-202.

quite exceptional grasp, power and courage (and both of these types are uncommon among successful politicians) he will, in ninety-nine cases out of a hundred, simply accept their view, and sign his name on the dotted line.”⁶

His dependence on his subordinates. In the nature of things a minister’s subordinates have him at their mercy. They have had more experience than he, and sometimes have more agility of mind. Moreover, they have dealt with ministers before, and know the species. Whichever way the top echelon turns they will have arguments, objections, precedents, and suggestions—all at their finger tips. When they present any matter for the minister’s consideration there is usually only one course for him to pursue unless he is prepared to spend days and hours in studying all its implications. And if he tried to do that he would have no time for anything else. Consequently the influence of the permanent officials upon the minister is apt to be controlling except to a man of commanding power and long administrative experience with a prodigious capacity for work.

The Westminster and Washington practice compared. Englishmen see nothing anomalous in placing unskilled laymen at the heads of departments which have administrative problems of a highly technical sort to handle. Initial unfamiliarity with the work is no barrier to appointment. When Lord Palmerston took the colonial office under his wing many years ago he said to his assistant: “Just come upstairs for half an hour and show me where those confounded colonies are on the map.” It is not the Anglo-Saxon theory of government that a major-general should be secretary for war or that an admiral should be first lord of the admiralty. On the contrary, it is deemed virtually essential that these highly professionalized departments should have civilians at their head.⁷

The same opinion is generally held, and the same practice followed, in the United States, but not in the chief countries of Continental Europe. In England the doctrine of amateur ministerial control is extended broadly to all the departments, and that has generally been true of the government at Washington, although in recent years there has been a tendency to depart from it. In the United States there is a growing disposition in certain quarters to insist that the men whom the President chooses for certain cabinet positions shall have some vocational qualifications for the departmental work which they are expected to do—for example, that the secretary of agriculture shall be a “dirt farmer,” and the secretary of labor someone who has had a close affiliation with organized labor.

⁶ Ramsay Muir, *How Britain is Governed* (3rd edition, London, 1933), pp. 55-56.

⁷ During the First World War a professional soldier, Lord Kitchener, was for a time secretary for war. He was considered to have been too “military” in his approach to departmental problems and to have been somewhat of a failure as an administrator.

Is professionalism desirable at the top? These demands betoken a failure to grasp a sound maxim of political science, namely, that the work of experts should always be supervised by laymen. When an expert supervises the work of experts there is almost certain to be disagreement, for it is in the nature of experts to disagree. It is also their inclination to be unfriendly to new and unusual ways of doing things. Experts like to keep things running in the ways to which they have become accustomed. Gladstone once said that he could not remember a single administrative reform which the experts of the civil service did not oppose when he first suggested it. The idea that the secretary of agriculture ought to be a farmer, moreover, suggests an erroneous idea of what this official is supposed to be and to do. He is not chosen to look out for the interests of the American farmer but for the interests of the American people. The chief qualification of a department head, in any country, is that he shall be ready and able to realize the interests of the whole people, not that he shall be someone who will devote himself to promoting the interests of a particular class.

The "political" heads in England. The English have held firm to this principle. In each department the minister and his highest subordinates are strictly political officers. They hold their posts so long, and only so long, as their party remains in power. When a cabinet goes out of office they go with it. They bear to the prime minister a relation not widely different from that which the secretaries and assistant secretaries in the national departments bear to the president of the United States, inasmuch as the tenure of each is bound up with that of the whole administration.

Their "nonpolitical" subordinates. But the subordinate officials who make up the permanent civil service are in a different position. They are non-political. Hence they do not lose their positions when a cabinet is turned out of office. If the House of Commons has any fault to find with the conduct of a permanent official in any department it turns upon the minister, although he may not deserve the blame. Conversely, if there is any credit being passed out for the conduct of a department the minister gets and takes it all, although he may be similarly undeserving of it. So far as responsibility is concerned, the minister is the whole department. A clear distinction should therefore be made between the *political* and the *permanent* staff of an English department. The former provides the democratic element in administration; the latter the bureaucratic. Both are essential—one of them to make a government popular; the other to make it efficient. And the test of a good government is its successful combination of these two qualities.

The political staff is small. The officials who make up the *political* staff of the English administrative departments are known by a variety of titles:

ministers, undersecretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, and what not. The chancellor of the exchequer, for example, has in the treasury a first lord (the prime minister) who is its titular head, and several junior lords, a parliamentary secretary, a patronage secretary (who serves as chief ministerial whip in the House of Commons), and a financial secretary. These lesser lights are commonly regarded as members of the ministry although they are not ministers and, of course, not members of the cabinet. All of them are political officers with seats in parliament, and they go out of office when the cabinet resigns.

What the permanent officials do. Taken as a whole this "political" staff may include a hundred persons or more, but in many departments it numbers only three, namely, the minister, the parliamentary secretary, and the parliamentary private secretary. In any event it forms a very small fraction of the entire administrative personnel. A great many times more numerous is the "permanent" staff, officially known as the permanent civil service, or by its critics, as "the bureaucracy." These officials are not politicians and do not sit in parliament. They are selected, appointed, and promoted for their administrative capacity alone. They must take no part in political campaigns. Public administration is their life work. Cabinets and parliaments come and go; but like Tennyson's brook the permanent staff keeps placidly on its way. Numbering half a million or more, and ranging from high administrative officers down to typists and clerks, these men and women collect the revenue, keep the accounts, compile the reports, enforce the laws, maintain the public institutions, and translate policy into action throughout the realm. Together they make up the civil service of Great Britain, entrance to which is by competitive examination, promotion on a basis of merit, and aloofness from politics the condition of permanent tenure.

THE CIVIL SERVICE

Origin of the British civil service: the East India Company. The story of the British civil service ought to have at least a paragraph or two in every book on the science of government, for it teaches some instructive lessons.⁸ The story begins with the tribulations of the British East India Company more than 200 years ago. This great commercial organization, with its numerous trading posts in the Orient, had to employ large numbers of young men as traders, bookkeepers, and clerks. The company paid good wages and, what was more, its employees were able to earn additional income by dipping into trade on their own account. Some of them made large sums in this way. So

⁸ It was originally named the *civil* service to distinguish it from the *military* service. A good outline of its early development is that given by Robert Moses in his *Civil Service of Great Britain* (New York, 1914).

the idea of getting to India, earning a good salary there and perhaps a fortune by speculation as well—that prospect appealed to many thousands of young Englishmen in the eighteenth century. The quest for company clerkships in India became so intense that the applications far exceeded the vacancies. And what happened is what might have been expected under such circumstances. Influential stockholders and others began to bring pressure upon the company's officers in order to have their own sons or nephews appointed. Incompetents many of them were, but paternal influence was often effective in their behalf and hundreds of younger sons hied themselves off to India, ostensibly to serve the company but in reality to shake the pagoda tree for their own benefit.⁹

The Haileybury experiment. Here was the spoils system in its most obnoxious form, that is, in a companionate marriage with nepotism. The whole service in India began to be demoralized and the higher officials of the company sent home complaints on every ship. In sheer self-defense, therefore, the directors of the company were forced to devise a plan whereby all applicants would be required to undergo a period of training before being sent to India. For this purpose a training school was established at Haileybury and there the unfit were weeded out. Haileybury became the only door to appointment and no one was allowed to enter the company's Indian service until he had attended at least four terms and passed the prescribed examinations. Having a great excess of applicants for admission, the school was able to raise its standards to a high point; higher, indeed, than those of Oxford or Cambridge.¹⁰ Then people began to notice that the East India Company was getting more than its share of the best young brains in the United Kingdom, and its extraordinary success in building up a great commercial empire was commonly attributed to its high standards of selection.

The change of 1853. Meanwhile, however, the number of political (as distinct from commercial) posts in India grew with the extension of the company's territorial interests, and public opinion in England began to rebel against a monopoly of these appointments by a single training school under the control of a commercial company. In 1853, therefore, parliament abolished the company's right to make these appointments and provided that all subordinate political offices in India should be filled from an eligible list based on open, competitive examination, with no attendance at any training school

⁹ There is a story that Lord Clive, when he managed the company's affairs in India, made it his practice to meet these young fortune-hunters immediately on their arrival. Asking each in turn how much money he expected to acquire by trading with the natives, Clive paid the new-comer the amount and shipped him back to England.

¹⁰ One eminent scholar, who later became a professor at Oxford, thus spoke of his own experience at Haileybury: "I soon discovered that if I wished to rise above the level of an ordinary student I had a task before me compared with which my previous work at Oxford could only be regarded as child's play."

required. The school at Haileybury was thereupon closed and the competition thrown open to all British subjects within certain age limits no matter where they had obtained their preparation.¹¹ The adoption of this plan was largely the work of Macaulay, the historian, and it embodied a step of great importance. It paved the way for the abolition of the spoils system and the establishment of competitive examinations in all the home departments of British administration. Reformers argued that a plan which was working so well in India ought to be given a trial at home. Their agitation succeeded and civil service examinations were gradually established for all branches of the British administrative service.

The spoils system is not of American origin. The spoils system is commonly thought to be of American origin, with President Andrew Jackson as its chief progenitor. But the spoils system is not a native son among American institutions. Long before it appeared on this side of the Atlantic it was the custom in Great Britain to look upon appointments to well-paid public offices as the legitimate rewards of partisan service. The spoils of victory were distributed among the personal and political friends of the ministers in Walpole's day, or even earlier. Even in the early decades of the nineteenth century members of the House of Lords were so successful in getting their impecunious relatives on the public payroll that John Bright once referred to the government service as "the outdoor relief department of the British aristocracy."¹²

Its early vogue in England. Members of parliament who supported the ministers were allowed to recommend officials in their own constituencies and these "placemen" bulked so large among the voters of some constituencies that they virtually controlled the elections.¹³ Appointments were for no definite term, hence removals could be made at any time. So Andrew Jackson and his friends did not invent the spoils system; they merely transplanted an old-world institution to a new environment where it grew luxuriantly. In time it became one of the most noxious weeds in the garden of American politics.

The first British civil service order-in-council (1855). The first civil service competitions were established in England shortly after the middle of the nineteenth century. The initial order-in-council did not go very far, however, and there were numerous flaws in it. The examinations, for example,

¹¹ To avoid any confusion it might be mentioned that the school known today as Haileybury (its full present title being Haileybury and Imperial Services College) was not founded until 1862. It is merely one of several private preparatory schools (like Eton, Harrow, Rugby, and so on) which in England are known as "public" schools. Incidentally, it was Prime Minister Attlee's school.

¹² Samuel Pepys, the famous diarist, owed his appointment at the admiralty to the influence of his cousin, Lord Sandwich. Pepys was remarkable in that, although not above accepting graft from naval contractors, he worked hard at his job, which made him almost unique among the placemen.

¹³ In one borough, where a count was made, it was found that 125 out of 500 voters had obtained appointments through the influence of a single member.

were to be in accordance with the specifications of the department concerned, and these were often expressed in a narrow or pedantic way. But step by step the law was improved, and the powers of the civil service commission increased, until eventually the principle of fair and open competition based upon broad academic preparation was extended to virtually all the nonpolitical positions in the national service.

The present system. Today all the permanent officials and employees in the public offices of Great Britain, with a few exceptions, are chosen under civil service rules. The exceptions include those officials whose work is of a highly specialized or confidential nature, such as the permanent undersecretaries, the assistant secretaries, the chiefs of bureaus or branches, and the principal clerks, as they are called. These officials in nearly all cases are promoted from lower positions in the department concerned. Exceptions are also made in the case of employees whose work is of an entirely routine character, requiring no particular qualifications, such as porters and janitors. The examinations for all other positions are conducted under the auspices of a Civil Service Commission composed of three members who are appointed by the crown. Its work, however, is subject on all matters to the approval of the treasury department. The commission's chief functions are to examine candidates and to certify the results. It has nothing to do with classifying positions, fixing salaries, determining promotions, or administering discipline.

Gradations in the service. The whole civil service, irrespective of departments, is divided into grades or classes, and a separate examination is provided for each. A candidate does not apply, for example, to be appointed to a clerkship in the foreign office, or in the ministry of health.¹⁴ He takes the general examination prescribed for all the higher clerks, and if he stands highest in the results he gets first choice as to the service which he will enter. It will be noted, accordingly, that the civil service examinations of Great Britain, unlike those commonly held in the United States, have no relation to the particular branch of administration which the applicant hopes to enter. The tests are both written and oral. As respects the main subjects of the written examinations (languages, mathematics, the natural sciences, history, and so on) the questions are of the customary academic character, but these are supplemented by papers which the civil service commissioners themselves devise, without the aid of academic examiners and are of a more general type.

The oral examination takes the form of personal interviews with the candidates. Much weight is attached to the showing made by a candidate at his interview, which is designed by the examiners to disclose his personal qualities rather than his erudition. It occasionally happens that candidates who have

¹⁴ He is, however, allowed to express a preference for the home service or the foreign service.

stood very high at the written examinations are rejected because of a poor impression made upon their interviewers. Because of a feeling that the personal qualities of an applicant cannot be fairly evaluated in the course of a short interview in an atmosphere of nervous strain, it has now become the practice to supplement the interview by a residential-observation test (popularly known as the "country house test") which requires candidates to spend a week-end or longer at designated country homes where they are treated as guests but are carefully observed as to their traits of personality, this being done in accordance with an unobtrusive technique which the psychologists have devised. It is as yet too early for any judgment to be formed as to whether the "country house test" will prove of sufficient value to warrant its being made a permanent feature of admission to the British civil service.¹⁵

Character of the examinations. The standards are high and the competition for the better posts is very keen. In the case of some positions it is virtually impossible for anyone not a high-ranking university graduate to secure a place near the top of the list. These examinations are probably the stiffest that exist in any country. In the case of the lower grades the examinations are not so difficult and may be passed with credit by those who have had a good secondary school education. But they are severely selective because of the keen competition. This competition does not seem to be lessened by the fact that an age limit is imposed on all candidates. This differs in the various grades, but it is fixed in such a way that young men and women, in order to enter the service, must take the examinations soon after graduating from school or university. In the case of university graduates the age limit is twenty-four. Thus there is no provision in Great Britain (as in the United States) for admitting to the civil service examinations middle-aged men and women who have failed to make headway in private vocations. The British civil service is a career which one must enter, if at all, at an early age. This limitation facilitates the system of promotions and eliminates most of the pressure which would otherwise come from politicians for the appointment of their needy friends.

A fundamental difference between the English and the American conceptions of a civil service examination. Writers on the science of government have rightly emphasized the important difference between the English and American methods of examining candidates for classified positions. In the United States nearly every civil service test is adapted to the particular position that is to be filled.¹⁶ The tests for clerks in the postal service, for example, are quite different from those given to applicants for clerical positions in the

¹⁵ For an amusing and devastating attack upon this system of testing see the novel by Sir A. P. Herbert, *Number Nine, or the Mind Sweepers* (New York, 1952).

¹⁶ There are some exceptions, such as the category of "administrative assistants" in the federal service.

forest service. It is not general education but special qualifications that the civil service authorities in the United States are required by law to ascertain. Hence the tests are specialized, practical, nonacademic. And if the appointee is to spend his entire life in a single position, doing a particular form of work, there is much to be said for the American plan. But if his initial appointment is regarded merely as a starting-point from which he expects to rise by promotion, there is much less to be said for it. Indeed, the outstanding defect of the American plan is that it tends to draw into the public service those men and women who can pass a routine test for a subordinate position but who lack the general capacity to rise. They go in as bookkeepers or accountants or draftsmen or typists, and are reasonably well qualified for such work; but when it comes to picking a bureau chief from a whole roomful of them, there is usually not one whose general education and versatility qualifies him to be considered for the higher post.

The American emphasis on the "practical." Public opinion in America, so far as it relates to civil service examinations, is strongly inclined to emphasize the specific, the concrete, the "practical." Americans have a belief that the test should be adapted to the job. It would be hard to convince the average Congressman that academic tests, such as we use for graduation with honors in our colleges and universities, would be the right thing for admission to the public service. Yet it has been demonstrated, over and over again, in all branches of administration, that men who have been broadly educated do better and rise more rapidly than those whose competence extends to a single line of work. The American system, to sum it up, does not articulate itself with the system of education in schools and colleges but prefers to accept special preparation by coaching schools; the English system, by recruiting directly from the regular educational institutions, disregards special training and goes out for general intellectual attainment.

The permanence of tenure in England. Once appointed to the civil service in Great Britain, an official holds office during good behavior, or until he reaches the age of sixty, when he may retire on a pension.¹⁷ There is no danger that he will be removed when a ministry changes. It is an essential of good behavior, however, that he shall abstain from all active participation in politics. He is free to vote but not to serve on an election committee or to canvass for votes. He is forbidden to address political gatherings or otherwise to make an open display of partisanship. But members of the civil service are permitted and even encouraged to join a national association of public employees and they are provided with a regularly and officially recognized channel for the presentation of their grievances.

Promotions. Promotions in the British civil service are made on the basis

¹⁷ At the option of the official this age limit can usually be extended to sixty-five.

of seniority, service records, and the appraisal of general ability. In the lower grades there are promotional examinations to test this ability; in the higher grades the appraisal is made by the department head. In the larger departments there are promotional boards which prepare the ratings and lists. These are submitted to the department head who makes his recommendations from them. But before they are put into effect these recommendations for promotion must be certified by the Civil Service Commission and approved by the officials of the treasury. In this way virtually all favoritism in promotions has been eliminated.

Why stability in the British civil service is essential. Now the following question will, no doubt, suggest itself to American readers: What is there to prevent an incoming English ministry from abolishing a large number of positions, thus throwing members of the civil service out of office, and creating new positions exempted from the examinations, for the benefit of the new ministry's own political friends? There are no legal barriers to such an action. But the tradition of permanence has now become so firmly entrenched that no new ministry would dare assail it. Every intelligent Englishman is aware that the continuity of administrative work would be utterly impossible under a system of ministerial responsibility if the nonpolitical staff went in and out with every change of ministry. In the United States the spoils system was able to rise and flourish for a long time because every national administration is bound to stay in office for at least four years.

It results from ministerial responsibility. But in England a ministry has no minimum tenure. It may take office today and find itself overturned within a few months. Obviously it would never do to make the continuity of administration subject to interruption at any time. And no sensible man would accept a subordinate post in the government service if he knew that he might be ousted within a week, a month, or a year. Permanence of tenure on the part of the administrative staff has been established in Great Britain because no other arrangement would be workable under the system of ministerial responsibility. The same permanence, as will be seen later, was established in France during the Third Republic because changes of ministry were even more frequent there than in Great Britain. If a parliament desires complete freedom to turn a cabinet out of power at any moment, it must make some provision whereby the routine work of administration will be carried on without frequent shocks of interruption.

Reliance on experts in England and in America. The association between a political staff which may change at any moment and an administrative staff which does not change has some important consequences. It provides parliament, through the ministers, with expert counsel on every question that

comes up. We often hear it said that the Congress of the United States should give greater heed to the opinions of the technical experts in Washington; that in enacting a tariff law, for example, it should defer to the advice of the Tariff Commission; that in railroad legislation it should be guided by the technical skill of the Interstate Commerce Commission, and that in dealing with the farmer's problems it should seek guidance from the experts in the Department of Agriculture. This may be quite true, but the practical difficulty lies in the absence of any provision for close contact between the leaders in Congress and the men who have the specialized knowledge. In the absence of administrative responsibility to Congress they are kept apart, although there is now more frequent consultation than there used to be.

This situation is unfortunate from both angles, because the official who is not a member of the legislature sees only one aspect of his problem; the same is true of the legislator who has had no experience in administration. Seeing the problem from different angles they often disagree, and since Congress has the ultimate power its view prevails. And indeed it is essential that the ultimate decision on any question of public policy shall rest with the legislative body. But it is equally essential to the successful working of democratic government that public policies shall not be decided without consulting the men whose function it will be to carry out such policies after they have been determined.

In England there are no "checks and balances." In England the men who execute the laws have a substantial share in the making of them. There has been some complaint, in fact, that they have too much influence upon the making of the laws. Public bills, introduced into parliament by the ministers, are put into form by the permanent officials of their departments. The provisions of such measures are largely the result of departmental experience. It is true, of course, that the ministers assume responsibility for these bills and assume the task of explaining and defending them in parliament. For it is an unwritten rule in parliamentary debates that no mention shall be made of the permanent officials either by way of praise or of criticism, even though it be known to everybody that they, not the ministers, have put the measure into form. So far as parliament is concerned these subordinate officials are non-existent. No minister ever takes shelter behind the staff of his department.

Is the minister controlled by his subordinates? Parliament, according to one of its critics, is a tool in the hands of the minister, and the minister is a tool in the hands of the permanent officials. This is a rather exaggerated way of putting it. But even an exaggeration may perform a useful service by sharply calling attention to a distinctive feature—as this one does—which is, that laymen in British government have the leadership while experts have

most of the power. So long as the government of Great Britain is conducted by men and not by supermen this will inevitably be the case. The work of such departments as the foreign office, the home office, the colonial office, the treasury, not to speak of the versatile ministry of health, involves an enormous amount of detail. These details must be turned over to subordinates, and reliance must be placed upon them. But details lead to precedents, and precedents crystallize into a general policy. It is in this sense that the permanent officials, although not supposed to have any share in directing the affairs of state, do in fact have a very important share.

Parliamentary "questions" and their relation to this matter. It is sometimes said that the dependence of the ministers upon their permanent subordinates is accentuated by the practice of asking questions on the floor of parliament. As will presently be explained, it is the privilege of any member of the House of Commons to put notices of questions on the question paper and have them answered by the appropriate minister during the hour allotted for this purpose.¹⁸ Now the data for answering these questions, and even the answers themselves, are prepared by his office and handed to the minister in neatly typewritten form. Necessarily so, for if a minister were personally to prepare all the answers which he is required to read in the House he would have time for little else. So he takes what is given to him. Moreover, when he has a speech to make, his civil service coadjutors round up the facts and the arguments for him—sometimes even write the speech itself. In this way, it is said, he becomes the mouthpiece of his official subordinates.

Here, again, it is easy to exaggerate. The British minister, when he appears on the floor of the House to answer questions or make a speech, is a good deal more than a sluiceway through which the brains of his subordinates are permitted to get regular exercise. The sheets which he holds in his hand may have been prepared for him, but the ideas are usually his own, or at least they are colored with his own convictions. And when a vigorous personality—like Lloyd George or Winston Churchill—occupies a cabinet post, one can be certain that secretaries and undersecretaries provide them with neither the substance nor the style of their parliamentary deliverances. Nevertheless the dominant fact remains that the influence of the permanent civil service on the government of Britain is continuous, effective, and one of its most significant features.

Public employment and the nationalization program: public corporations. It might be thought that the action of the Labor government in taking various large industrial and commercial enterprises into public ownership

¹⁸ See below, Chapter xii.

would greatly increase the size of the national civil service, but such has not been the case. The chief reason is to be found in the fact that, instead of placing these nationalized concerns directly under the control of some government department they have been turned over to "public corporations" for administration. When the government took over the coal mines, for example, it did not commit them to the care of the ministry of fuel and power but established a national coal board to operate them. When it took over the Bank of England by acquiring ownership of that institution's capital stock it did not place the bank directly under the chancellor of the exchequer but entrusted its management to a board of directors appointed by the government. So with the control of civil aviation, broadcasting, railroad transport, electricity, and inland waterways. In each case the acquisition of the service by the government has resulted in the creation of one or more public corporations.¹⁹

A similar development in the United States. This use of public corporations in the performance of economic functions is not peculiar to Great Britain. In the United States we have seen a similar development during the past twenty years even without any program of nationalization. One need only call to mind the Reconstruction Finance Corporation, the Tennessee Valley Authority (TVA), the United States Maritime Commission, the National Housing Administration, and so on. There are several reasons for this development both in Great Britain and the United States. One may be found in the fact that in both countries the regular government departments have long since become overburdened. Rather than enlarging the ministry or the cabinet it seemed easier to decentralize the responsibility by creating authorities outside the immediate circle. There is a further consideration, namely, that the regular departments are hedged about by various statutory provisions—civil service regulations, financial procedure, and so on. A new public corporation can be relieved from any or all of these restrictions by the law which establishes it. In Great Britain virtually all public corporations have been given the right to select their own personnel and to fix rates of remuneration without going through the regular civil service procedure. In the United States we have not gone that far—as yet. Finally, the use of the public corporation idea permits a certain continuity. The board, commission, or "authority" can be made up of three, five, or seven members, whose terms do not all expire at the same time. A few experienced members will thus carry over. Such an advantage is not to be had, of course, when a minister or cabinet secretary is in charge.

¹⁹ These are known by various names—corporations, boards, commissions, or authorities. For example, there is the British Overseas Airways Corporation, the National Coal Board, the British Transport Commission, and the Port of London Authority. All are made up of members appointed by the crown on recommendation of the ministers.

The internal organization of the civil service: the Whitley councils.

A device, rather widely employed in private industry to secure cooperation between labor and management, has been applied with considerable success to the civil service since 1919. This is the Whitley Council Plan, first suggested for private firms by a committee whose chairman was Mr. J. H. Whitley. Whitley councils contain representatives of the rank-and-file employees and of the managerial side of the shop or department. They are organized at three levels: *works committees* based on each office, dockyard, and so on; *departmental councils*; and a *national council* of fifty-four members, half appointed by the treasury and half by the civil service associations. Although complaints are heard that the employee side of the argument may secure no more than a polite hearing, the councils have a number of reforms to their credit and help to give the civil servant a feeling that he is participating in decisions regarding his conditions of work.

Unions of civil servants. It is through their various associations that the civil servants secure representation on the Whitley councils, and nearly all are now organized into one or another of a large number of associations. Many of these are linked together into federations of government employees such as the Civil Service Alliance with more than 200,000 members. Many of these federal organizations in turn are affiliated with nongovernmental labor bodies such as the Trades Union Congress and even with the Labor party itself.

Technique of British Administration. In addition to the books listed at the close of the preceding chapter, the following will be found useful: C. T. Carr, *Concerning Delegated Legislation* (Oxford, 1941); W. A. Robson, *Justice and Administrative Law* (3rd edition, London, 1951), and the same author's *British Civil Service* (London, 1936); M. P. A. Hankey, *Government Control in War* (Cambridge, England, 1945); C. K. Allen, *Law and Orders: An Inquiry into the Nature and Scope of Delegated and Executive Powers in England* (London, 1945); the same author's *Law in the Making* (London, 1927), especially chap. vii; and John Willis, *The Parliamentary Powers of English Government Departments* (Cambridge, Mass., 1933). See also S. E. Finer, *A Primer of Public Administration* (London, 1950).

The British Civil Service: Origin and Development. Useful books on this topic are H. R. G. Greaves, *The Civil Service in a Changing State* (London, 1947); E. W. Cohen, *The Growth of the British Civil Service, 1780-1939* (London, 1941); Herman Finer, *The British Civil Service* (new edition, London, 1937); Hiram M. Stout, *Public Service in Great Britain* (Chapel Hill, North Carolina, 1938); H. E. Dale, *The Higher Civil Service of Great Britain* (Bristol: Oxford University Press, 1941); and E. N. Gladden, *The Civil Service; Its Problems and Future* (London, 1945).

Present Organization and Workings. N. E. Mustoe, *The Law and Organization of the British Civil Service* (London, 1932), is a comprehensive study. Mention should also be made of Herman Finer, *Theory and Practice of Modern Gov-*

ernment (2 vols., New York, 1932), Vol. II, pp. 1163-1514. A concise account of the system, its history and present workings, is that given in F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chaps. x-xi. Likewise there is a good outline in Sir John A. R. Marriott, *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. II, chap. xxvii. See also T. A. Critchley, *The Civil Service Today* (New York, 1953); and Bosworth Monck *How the Civil Service Works* (New York, 1952). A volume entitled *The British Civil Servant* by W. A. Robson and others (London, 1937) finds considerable room for criticism in the existing arrangements. Class preference and isolation from non-bureaucratic life are particularly commented upon. A publication on *The Reform of the Higher Civil Service* has been issued by the Fabian Society (London, 1947).

Other Public Employees. On non-ministerial administrative agencies there are discussions in W. B. Robson, *Public Enterprises* (London, 1937); T. H. O'Brien, *British Experiments in Public Ownership and Control* (London, 1937); A. L. Gordon, *The Public Corporation in Great Britain* (Oxford, 1938); E. Davies, *National Enterprise* (London, 1943); and W. A. Robson (Ed.), *Problems of Nationalized Industry* (New York, 1952).

Comments and Comparisons. Materials for comparison with other countries are printed in Leonard D. White, *Civil Service in the Modern State* (Chicago, 1930), and in his *British Civil Service* (New York, 1935), as well as in another volume by the same author (with others) entitled *Civil Service Abroad; Great Britain, Canada, France and Germany* (New York, 1935). Harvey Walker, *Training Public Employees in Great Britain* (New York, 1935) covers a wider range than its title might indicate. Ramsay Muir's volume on *How Britain is Governed* (4th edition, London, 1940) contains a trenchant criticism of the way in which he believes that the civil service has developed into a bureaucracy (pp. 37-80). A survey of employee training may be found in T. J. Tickner, *Modern Staff Training: A Survey of Training Needs and Methods of Today* (London, 1952). The chapter on "Government by Amateurs" in Sir Sidney Low's *Governance of England* (pp. 199-217) is interesting and suggestive. Samuel McKechnie, *The Romance of the Civil Service* (London, 1934), may also be mentioned. Instructive articles on various phases of the civil service appear from time to time in the journal entitled *Public Administration*.

Documents. Among public documents which, although issued several years ago, contain useful information, are the *Report of the Joint Committee on the Organization of the Civil Service* (1920), and the *Report of the (Tomlin) Royal Commission on the Civil Service* (1929-1931).

The Whitley council system is described in Leonard D. White, *Whitley Councils in the British Civil Service* (Chicago, 1933), and E. N. Gladden, *Civil Service Staff Relationships* (London, 1943).

For a comparison of the British Civil service with that of the United States a useful book is Lewis Mayers, *The Federal Service* (New York, 1922). Other references may be found in Sarah Greer, *A Bibliography of Civil Service and Personnel Administration* (New York, 1935).

CHAPTER VIII

The House of Lords

The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year.—John Stuart Mill

The oldest lawmaking body in the world. The British parliament consists of two chambers, known as the House of Lords and the House of Commons. The House of Lords is commonly spoken of as “the second chamber”; but historically it is the first, being the oldest legislative body in the world. It has had a continuous existence in one form or another, with a single brief interruption, for more than a thousand years. In a previous chapter something was said about the origin and early history of the Lords; it grew out of the Great Council which, in a way, was the successor of the Saxon Witan. Its original members were the magnates of the realm, the great landowners, bishops, and barons. The king on his throne presided over them. The large landed proprietors monopolized the government on the principle that “those who own the land should rule it.” But democracy fought its way up the centuries and the Lords gradually lost most of their legislative strength. In the early years of the nineteenth century, according to Gilbert and Sullivan, the House of Lords “did nothing in particular and did it very well.” Nevertheless it continued to be much more than a negligible factor in English Government for a hundred years more, that is, until the Parliament Act of 1911 was passed.

THE PEERAGE

The peerage. To understand the composition of the House of Lords it is necessary to know something about the peerage, what it is and what it is not. On this subject of peers and peerages the average American has rather cloudy

notions. He is aware that there is a certain element in the British population known as the nobility, the members of which sometimes marry American heiresses, and he has observed that they have a variety of titles—duke, marquess, earl, viscount, and baron. But what these ranks imply, or which has precedence over another he usually does not know, nor does he very much care. In the minds of most Americans the peerage is not an institution but an anachronism.

Its importance. Yet the student of English government cannot so lightly brush aside those princes and lords who “are but the breath of kings,” for both the peerage and the House of Lords have woven themselves deeply into the British political system. The peerage constitutes the top stratum in British society; were it to disappear the social hierarchy of the United Kingdom would have to be recast. The House of Lords is an integral part of the British political and judicial systems; its composition and powers must be understood by anyone who desires to know how the laws are made and appeals decided. Thomas Carlyle once said of the Corn Laws that they were too absurd to have a chapter, so he omitted them. But he did not thereby contribute much to the enlightenment of his readers on matters of fiscal policy. We would think poorly of any Englishman were he to write a treatise on American government with no mention of Tammany Hall, the spoils system, the “white primaries” in the South, or the gerrymander, merely because he regarded these things with a personal aversion. The importance of political institutions is not eliminated by ignoring them.

Ranks in the peerage. The term “peers” originally meant equals, but the British peerage is a body which contains men and women of widely different ranks. It is sometimes said that the princes of the royal family constitute the first and highest gradation in the peerage, but this is not strictly true. The princes, as such, are not members of the peerage at all. But the eldest son of a British king¹ is Duke of Cornwall by birth and becomes Prince of Wales by a bestowal of that title. The king’s second son (when he has a second son) becomes Duke of York, and still younger sons have other ducal titles conferred on them. It is as dukes and not as princes that these members of the royal family belong to the peerage of the United Kingdom. As peers of the blood royal, however, they outrank all other peers.² So, in reality, there are only five regular gradations in the British nobility—dukes, marquesses, earls, viscounts, and barons.

Dukes, marquesses, earls, viscounts, and barons. The rank of duke made its first appearance in 1337 when the Black Prince became Duke of Cornwall. Dukedoms have always been given sparingly, and today there are

¹ Or the queen when the monarch is a woman.

² Actually they are peers “in name only” for, by rigid convention, they neither debate nor vote in the House of Lords.

fewer than thirty dukes in the entire peerage. It is the highest rank that can be conferred upon anyone outside the royal family. Next come the marquesses, of whom there are twenty-seven; the earls who number about one hundred and thirty; the viscounts who form a relatively small element (about ninety); and the barons who are the most numerous element (over five hundred).³ These figures, by the way, do not include members of the Scottish and Irish peerages. Taken all together the House of Lords has about 860 members.

All are hereditary. All ranks in the peerages (with the exception of the law lords and the ecclesiastical dignitaries, as will be explained in a moment) are hereditary. The eldest son of a peer becomes a peer on his father's death; until then he is a commoner, an ordinary citizen, with no special privileges. The younger sons and daughters also pass into the ranks of ordinary citizenship, although in many cases they bear courtesy titles.⁴ Most of those who constitute the peerage have inherited their rank, but new peers are often created by the crown.

The British peerage is not a caste. Special emphasis should be given to the point that there is only one peer for each peerage. Save for the one who holds the title all other members of the family are commoners. And save for the one who inherits the title all of them remain commoners. Thus the great majority of those who are born sons and daughters of peers pass into the ranks of the untitled and are assimilated there. This, above all things else, has differentiated the British peerage from Continental European institutions of the same general type. In France, before the Revolution, all the children of a nobleman became and remained members of the *noblesse*. As a result the French nobility grew to be a very large body, with a consequent cheapening of its prestige. Likewise it became a caste, a privileged order, with no overflow into the ranks

³ The rank of earl goes back to Saxon times, and that of a baron to the Norman period. The rank of marquess dates from 1385, and that of viscount from 1442. No new ranks in the peerage have been created, therefore, for over 500 years.

⁴ These "courtesy" titles add to the outsider's confusion. He reads about the doings of Lord John Russell, Lord Hugh Cecil, Lord Randolph Churchill, and others who attained distinction in the House of Commons and wonders how men with such titles ever managed to sit in the lower House. It means that these statesmen were younger sons, commoners, with courtesy titles. But what are courtesy titles? The matter may be explained in this way: The eldest son of a duke, a marquess, or an earl (but not of a viscount or baron) usually makes use of one of his father's subsidiary titles as a courtesy title during his father's lifetime. Nearly every peer in the higher ranks of the peerage has one or more subsidiary titles—some have nearly a dozen of them. They usually indicate the gradual progress of themselves or their ancestors from the lower to the upper ranks of the peerage. Thus the Duke of Devonshire is also Marquess of Hartington, Earl of Burlington, and Baron Cavendish. His eldest son, accordingly, is by courtesy known as Lord Hartington, but during his father's lifetime he is not a member of the peerage and does not have a seat in the House of Lords. All younger sons of peers are entitled to the prefix "Honorable," and by a well-recognized social usage the younger sons of dukes and marquesses are known as "Lord John So-and-So," or "Lord George So-and-So," as the case may be. The same general rules as to courtesy titles apply to the daughters of peers, except that for some mysterious reason the daughters of an earl are known as "Lady Mary So-and-So" and "Lady Gwendolen So-and-So" whereas their brothers have only the prefix "Hon."

of the people. In England, on the other hand, the peerage has never been a closed corporation. Men who are born commoners become peers; men who are born sons of peers become commoners. This fluidity is its source of strength. Any British subject can become a peer by reason of his own merits, if he possesses them. To that extent the peerage is a democratic institution.

THE LORDS OF PARLIAMENT

Branches of the peerage: The peerage of England, of Scotland, and of Great Britain. Not all members of the peerage are Lords of Parliament, but only peers of certain designated categories. On the other hand some members who are not hereditary peers have been given seats. Before the union of England and Scotland in 1707 all English peers of whatever rank sat in the House of Lords, and all Scottish peers sat in the Scottish upper House. By the terms of the union it was provided, however, that while all English peers should continue to have seats at Westminster the peerage of Scotland should be represented by sixteen members only. These sixteen are elected for each parliament by the whole body of Scottish peers, which now numbers less than fifty in all.⁵ Eventually the old Scottish peerage will disappear, for no additions have been made to it since the union of 1707. The same is true of the old peerage of England. Nearly all additions during this period of more than 200 years have been to the peerage of the United Kingdom which was established at the time of the Anglo-Scottish union.

The Irish peerage at the time of Ireland's union with Great Britain (1800) was a large body. To have given all these Irish peers the right to sit in the British House of Lords was not thought desirable, so it was provided by the Act of Union that the whole body of Irish peers should select twenty-eight of their members to represent them at Westminster.⁶ This selection is not made, as in Scotland, for the duration of a single parliament but for life. The only occasion on which the Irish peers meet to select a representative is, therefore, when one of the twenty-eight dies or becomes disqualified. It was also provided in the Act of Union that the total membership of the Irish peerage should gradually be reduced to 100 members, and by 1921 this had been accomplished. The treaty which established the Irish Free State made no change in the status of the Irish peerage or its representation in the House of Lords; but vacancies in the quota of Irish peers have not been filled since 1922 and it is assumed that none will be filled hereafter. Thus the representation of the Irish peerage in the House of Lords will gradually pass out. By 1950 only seven were left.

⁵ Some of the Scottish peers, however, have titles in the English peerage or in the peerage of Great Britain as well. Thus the Duke of Buccleuch sits in the House of Lords as Earl of Doncaster.

⁶ Quite a few Irish peers, however, were induced to support the Act of Union by the promise of a British peerage with a seat in the Lords.

The spiritual peers. But the Lords do not consist of hereditary peers only. Indeed, up to the time of Henry VIII, who created many new peers from among his friends and abolished the abbeys, more than half of the membership consisted of ecclesiastics. To this day it contains twenty-six "lords spiritual," namely, the two archbishops of the Established Church (Canterbury and York), together with twenty-four bishops. Among these the bishops of London, Durham, and Winchester are always included; the other twenty-one seats are allotted among the remaining bishops in order of seniority, that is, in the order of their appointment to office. When a bishop retires from his ecclesiastical office he loses his right to a seat in the House.

The law lords. By statute it has also been provided that nine "lords of appeal in ordinary" shall be appointed peers for life and have seats in the House of Lords. These lords of appeal are chosen from among the distinguished jurists of the British empire, and unlike other members of the House of Lords are paid an annual salary. The reason for adding this legal element to the membership is found in the fact that the House of Lords is not only a legislative chamber but a court of appeal from the lower courts of England, Wales, Scotland, and Northern Ireland. And since a body of over 700 members, most of them with no knowledge of the law, cannot function as a court, it is necessary to have the judicial work of the House performed by men who have had legal training. The functions of the House of Lords as a court are therefore performed by the "law lords" of the chamber who include not only the nine lords of appeal but the lord chancellor, former lord chancellors, and any other lord of parliament who holds or has held a high judicial office. These law lords do not form a committee; their sessions are, officially, sessions of the whole House. In theory any member of the House of Lords is entitled to attend and to take part in the hearing of appeals; but of course the lay members never do.

How new peers are created. Peers of any rank may be created by the crown at any time and without any limit as to number. In other words, the creation of new peers is a matter which the crown decides on the advice of the prime minister. Members of the cabinet may, and do, present names for their premier's consideration. So do others outside the cabinet circle. On some occasions the king has offered a peerage to a retiring prime minister before asking the advice of a new one. A few additions to the peerage are made almost every year. On the other hand, some peerages are extinguished from time to time by the death of peers who leave no eligible male heirs. It is not necessary that there shall be sons to inherit the title; in most cases the peerage will pass, in default of sons or grandsons, to brothers or even to cousins, providing that they are descendants in the male line of the original grantee.

Peeresses not in the House. In some instances women have inherited rank in the peerage and have thus become peeresses in their own right. But none of them has yet been permitted to sit in the House of Lords. On two occasions a bill was introduced to give them this privilege, but in both instance the Lords ungallantly defeated it by a slender margin. The rules of succession to any title of nobility depend upon the stipulations contained in the original royal patent which created the peerage. The crown may fix these rules at its discretion, but the succession must follow some method of descent already recognized at law.

No resignations. A peerage cannot be resigned or relinquished. The heir must accept his title no matter how much he may be disinclined. If, however, he is under twenty-one years of age when he inherits the title he does not take his seat in the House of Lords till he attains his legal majority. In 1919 Viscount Astor tried to get rid of the peerage which descended to him on his father's death because he wanted to continue his membership in the House of Commons and could not sit in both chambers; but he found that this could not be done except by a special act which parliament refused to pass. A peerage by grant (that is, an offer of a new peerage) can be declined, but not a peerage by inheritance. Occasionally some cousin or nephew of a peer, having lived for a long time in America, suddenly finds himself the heir to a title. He can evade his new status only by keeping clear of British soil, or by losing his British nationality.

Who are customarily given rank in the peerage? The granting of peerages is in part determined by custom, but to a larger extent it depends upon the temper of the cabinet, with the prime minister exercising a controlling voice in the matter. Custom dictates, for example, that the prime minister himself, or a speaker of the House of Commons, on retirement from office, shall be offered a peerage. The same applies to ministers who have rendered distinguished public service over a considerable term of years. Thus William Pitt, the elder, became Earl of Chatham; Benjamin Disraeli went to the House of Lords as Earl of Beaconsfield; Arthur J. Balfour was raised to the peerage as Earl Balfour; and Herbert H. Asquith became Earl of Oxford and Asquith. Distinction in fields other than statesmanship also calls for the bestowal of this honor—in the military and naval service, for example. Every student of English history will recall numerous examples such as the Duke of Marlborough, the Duke of Wellington, Earl Nelson, the Earl of Camperdown, Viscount Wolsley, Earl Kitchener, Viscount Alexander, and many others. Notable contributions to literature, art, or science are frequently recognized in the same way, as illustrated by the examples of Lord Tennyson, Lord Kelvin, Lord Lister, Lord Avebury (Sir John Lubbock), Lord Bryce, Lord Passfield (Sidney Webb),

Lord Cherwell, and Lord Keynes. And there are not a few who have crept into the ranks of the peerage by reason of large wealth, judiciously used. Munificent gifts to hospitals, educational institutions and philanthropic enterprises, contributions to the party campaign funds, and other forms of largesse have helped to further the ambitions of prospective peers.

The public attitude. New peerages are usually granted on certain anniversary occasions, the king's birthday or New Year's Day. As a rule the honors are worthily bestowed and the action of the cabinet is generally approved by public opinion, although it sometimes happens that an individual name comes in for newspaper criticism.⁷ Some years ago it was predicted that when a Labor cabinet came into office there would be an end to the creation of new peers. This prediction proved false, however, for unless the House of Lords is to be abolished, the party in power requires adequate representation in that chamber, and as very few of the older peers are enrolled in Labor's ranks new peers have had to be created.

Broadly speaking, the original and basic idea of the House of Lords has remained unchanged throughout the centuries. The mediaeval barons represented the only significant kind of wealth in their day, the land. This was true not only of the lay peers but of the bishops as well. When other forms of wealth became important its holders sooner or later found themselves in the peerage. Merchants and manufacturers, bankers and brewers donned coronets and ermine robes. Today some of the great newspaper proprietors are peers. Although ancient titles exist there are very few which date from before 1500, and the average age of a peerage title is under fifty years.

Non-peerage titles. Knights and baronets are not peers. These titles represent historically the class of minor nobility who held their lands by noble (military) tenure but who were not important enough to be summoned to the Great Council as barons. They might be called upon to represent their county in the House of Commons, if elected by the "forty shilling freeholders." Today knighthoods are conferred simply as non-hereditary titles of honor. A knight may be a simple "knight bachelor" or be made a member of one of the several orders of knighthood of differing precedence and importance. The prefix "Sir" precedes his Christian name and the initials of his order, if any, follow: G.C.B. for Knight Grand Cross of the Bath; K.C.M.G. for Knight Commander of St. Michael and St. George, and so forth. A baronetcy is a kind of hereditary knighthood, invented originally by James I as a means of taxing the wealthy gentry. Baronets customarily use the abbreviation "Bart." after their names.

Choosing a title. The recipient of a peerage is permitted, with certain limitations, to choose his new appellation. Very often he takes it from some

⁷ See the interesting discussion of "Titles and Honours" in W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), pp. 351-360.

place with which he has been connected by residence or with which he has had some political connection. Thus Sir F. E. Smith, when he became an earl, chose the title "Earl of Birkenhead" because he had been a member of the House of Commons for that city. Some retain their family patronymic, as John Maynard Keynes did when he became Lord Keynes. Provided the title has not been already assumed by some other peer, and making allowance for the fact that by custom no peer below the rank of earl may take for his title the name of a county or county town, he has a free choice. The new peer's wife usually helps him decide the matter, it is said, and properly so, for the wife of a peer, like the wife of a commoner, is saddled with her husband's name. Here is an opportunity to do something that satisfies both halves of the household. A peerage, of course, does not come out of a clear sky, and the future title has usually been discussed and settled in conjugal conclave before it arrives.⁸

Gladstone and Disraeli. The grant of a new peerage, as has been said, may be declined, although peerages by inheritance may not, and declinations have sometimes taken place. Gladstone afforded a conspicuous example. On more than one occasion he was pressed to accept a title of nobility but steadfastly refused, even after he retired from public life. But his great antagonist, Disraeli, accepted a peerage because his health prevented him from continuing to bear the strain of leadership in the House of Commons. Asquith followed Disraeli's example on his retirement from the premiership; and so did Mr. Lloyd George. Rank in the peerage carries no salary from the public treasury, and members of the House of Lords receive no remuneration for their services. But most peers are well-to-do and many of them figure prominently among the landowners and captains of industry in England. To maintain the dignity and manner of living customary among members of the peerage has required a considerable income, for even a baron was once expected to maintain two establishments, one in London and another in the country. Heavy income taxes, however, have in these later years made this much more difficult than it used to be.⁹

Privileges of peers. Members of the House of Lords have various privileges and are under certain disabilities. Freedom of speech and freedom from arrest while the House is in session extends to the Lords as well as to the members of the lower chamber. For many centuries it was a rule of law, dating

⁸ Tastes differ as widely in names as in attire. Disraeli, as has been said, chose to be known as Earl of Beaconsfield; Sir Max Aiken chose the title of Baron Beaverbrook, hinting at his Canadian origin, for the beaver is Canada's animal. Ignatius O'Brien, in 1918, decided that Baron Shandon would suit his taste; and Sidney Webb became Lord Passfield. Others, such as Bryce, Keynes, and Alexander deemed their old names good enough. When a new title is selected the old family patronymic is retained for the use of the daughters and younger sons. The family name of the Bedfords is Russell; that of the Salisburys is Cecil that of the Aberdeens is Gordon; that of the Norfolks is Howard; and that of the Devonshires is Cavendish.

⁹ The relative poverty of the modern peerage received recognition lately when the Earl Marshall decreed that simplified attire omitting the expensive robes and coronets would be acceptable for peers below the rank of earl attending Queen Elizabeth's coronation in 1953.

back to the Great Charter of 1215, that a peer could only be tried by his fellow peers and hence was not amenable to the ordinary courts. When, therefore, a member of the House of Lords was charged with a serious offense his case was heard and determined by his fellow members in that House. The last occasion on which the House served in this capacity was nearly fifty years ago, and the privilege is now abolished.

Peers do not vote at parliamentary elections. Members of the peerage have no votes at parliamentary elections. Nor, with two exceptions, are they eligible as candidates for the House of Commons. One exception extends to all Irish peers who are not among the Irish representatives in the House of Lords. Any such Irish peer may be elected from an English (but not from a Northern Ireland) constituency.¹⁰ Peeresses "in their own right" provide the other exception. The disqualification from candidacy does not extend in any case to the members of a peer's family, but only to the holder of the title. Even the eldest son of a peer, the heir-apparent to the title, may be elected to the House of Commons during his father's lifetime. But, as already noted, on succeeding to the title he must vacate his seat in the lower chamber. Sons of peers have figured prominently in the Commons on many notable occasions and in some cases have been its leaders.

PROCEDURE AND POWERS

The House of Lords in session. The House of Lords meets in its own chamber at Westminster. It is an impressive meeting-place, the handsomest legislative chamber in the world, richly upholstered and dowered with a soft light that filters through the magnificent stained-glass windows. There is an air of leisure and luxury about it. The sessions of the Lords are coincident with those of the Commons. When the lower House ends its session the upper chamber does likewise; but each House can adjourn separately.

Its presiding officer. As noted in Chapter VI, sessions of the House of Lords are presided over by the lord chancellor. He sits on a large couch or divan known as the Woolsack¹¹ and puts motions, but he does not have any disciplinary powers. He does not even have the power to recognize peers who desire to speak. When two of them rise simultaneously the House decides, if necessary, whom it will hear. This restriction of the presiding officer's power dates back to the time when the lord chancellor was not a peer but merely an

¹⁰ One such, the Earl of Winterton, represented a Kentish constituency for many years. Before his retirement in 1950 he was the "Father of the House," the member with the longest unbroken record of membership.

¹¹ The term "Woolsack" originated in the reign of Elizabeth when a statute was passed prohibiting the exportation of wool from England. The judges in the House of Lords, in order to show their approval of the measure and to emphasize the desirability of creating a home market for English-grown wool, had their bench stuffed with it. To the dismay of some antiquaries it was disclosed recently that to-day's "Woolsack" is stuffed with horsehair.

officer of the king's household. Even yet, as has been said, there is no legal requirement that he shall be a member of the House, although he customarily is one.

Its sessions. The House of Lords meets regularly on Tuesdays, Wednesdays, and Thursdays. Sessions are sometimes held on Mondays also, and more rarely on Fridays. Members like to spend their week-ends out in the country. The sittings do not usually last more than an hour to two and as a rule they are sparsely attended. Out of the eight hundred and sixty or so members not more than thirty or forty usually attend except when matters of importance are to be discussed. It is said that more than two-thirds of the Lords attend fewer than ten sittings a year. Three members constitute a quorum to do business, but at least thirty must be present in order to pass any bill. In the latter part of the session, however, when bills come up from the Commons the daily sittings last longer and are better attended. The proceedings are traditionally dull, although the "full-dress debates" now and then are of high quality; few questions are ever asked; there are no estimates of expenditures to be discussed; and the recommendations of committees are ordinarily accepted with little or no dissent.

Its rules and debates. On the other hand the rules of the House are so liberal that it is possible for any peer to initiate a debate, at almost any time and on any matter of public importance, by "moving for papers," that is, offering a resolution asking that certain official documents be laid before the House. In this way public attention may be drawn to any question, and a full discussion may be had in the Lords at a time when the pressure of business in the Commons precludes a long debate there. During such discussions the standards of debate in the Lords are quite up to (or even above) those of the popular chamber, for the House of Lords contains a number of good speakers. What is more, they are men who speak to the point. Speeches in the House of Lords are not made for the benefit of the press gallery. A peer has no constituents to humor or impress. He represents no one but himself. Politically the House of Lords is one-sided, the Conservatives being in an overwhelming majority. There is never any doubt as to the outcome of a vote when party lines are drawn; but on most questions the House does not divide that way.

Special powers of the House of Lords; impeachments. The House of Lords has two special powers which it does not share with the House of Commons. First, it is a supreme court of appeal for the hearing of certain civil and criminal cases, but its judicial work is performed by a very small proportion of its membership, as has been shown. In the second place it is the body which hears and determines impeachments brought by the House of Commons. This is an ancient prerogative of the Lords; it goes back to the days of the Saxon

Witan. Before the development of ministerial responsibility it was a function of great importance inasmuch as it afforded the only means of calling the king's advisers to account. It was through the power of impeachment that parliament managed to acquire its control over the actions of the crown. During many centuries this power was freely used, but it has now dropped into abeyance. One can scarcely conceive of a situation, under the existing parliamentary system, in which it would be necessary to impeach any British official. A vote of the House of Commons requesting his removal from office would be enough, for no ministry could deny such a request and remain in office.¹² And if it should be necessary to penalize any public officer otherwise than by removal from office, the ordinary courts afford an adequate process.

Legislative functions: introduction of bills. Aside from financial measures, any public bill may be introduced in the House of Lords. Financial measures must originate in the Commons. As a matter of usage, however, very few legislative proposals except private bills ever get their first reading in the upper chamber, although occasionally some important measures of a non-contentious character are originated there, as a matter of procedural convenience, with the approval of the ministry. Nine-tenths of the public measures begin their journey in the Commons. The result is that during the early weeks of a session the Lords have almost nothing to do. Then, as the House of Commons gets into its stride, the bills come up in considerable numbers, and for a time the peers are amply provided with work. It has frequently been proposed that the cabinet should fairly apportion the introduction of government measures to both chambers, thus avoiding idleness at the beginning of a session and congestion at the end; but this suggestion has not found favor. There would be little advantage in setting the Lords to work on important measures until after the attitude of the lower chamber has been determined.

Private bills in the Lords. A very real service is performed by the House of Lords in connection with private bills. What a private bill is and how it is handled is described in detail in Chapter XII. Here we may note only that it is a time-consuming process and that the private bills committees of the Lords have the reputation of performing their duties well and impartially. In so doing they save the busy members of the House of Commons a great amount of time that they would otherwise have to devote to this quasi-judicial work.

THE CONTROVERSY WITH THE COMMONS

Rejection of bills sent up by the Commons: the old arrangement. Until 1911 it was technically the privilege of the Lords to reject any bill, even a money bill. But by non-use the upper House had lost its right to

¹² This, of course, would not include the judges, who are removable only on an address or resolution of both Houses.

amend any financial measure, and in the opinion of many constitutional lawyers it had also lost, by non-use, its right to *reject* such a measure—although the Lords themselves had never conceded this loss. As to bills other than money bills there was never any question, prior to 1911, that the House of Lords might both amend and reject anything sent up by the Commons. The power of rejection was, in fact, used on many momentous occasions during the nineteenth century, notably in the defeat of the first Reform Bill (1831) and the second Irish Home Rule Bill (1893). In such cases there was no way in which the Commons could make its will prevail against the opposition of the Lords. To be sure, there was one potential method of achieving this end, but it was so drastic as to preclude its use on any save the most critical occasions. The method involved the creation of enough new peers to swamp the opposition in the Lords.

How it worked. Under ordinary conditions, when the House of Lords rejected a measure that had been passed by the Commons there was some grumbling in the lower chamber but nothing happened. If the rejected bill was an important government measure, introduced by the ministers and passed under their guidance, the prime minister could advise a dissolution of parliament and a general election on the issue. This would put the matter before the high court of public opinion for judgment. Then, if the people upheld the ministry, the Lords were expected to give way, which they usually did.

The conflict over the Lloyd George budget. It was not until 1909 that a deadlock between the Lords and Commons arose in such form and assumed such bitterness as to compel the making of a new provision. In the autumn of that year Mr. Lloyd George, then chancellor of the exchequer in the Liberal ministry, brought forward a finance bill or budget which proposed the levy of certain new taxes, more particularly some new taxes on land. As these taxes would bear heavily upon the owners of large estates, the House of Lords rejected the measure just as they had defeated various other bills which had been passed by a majority in the Commons. The lower House showed its resentment by adopting a resolution which declared the action of the Lords to be a breach of the constitution and a usurpation of the privileges of the House of Commons. But the Lords stood their ground, and the prime minister decided to request an appeal to the voters. Accordingly a general election took place in the early days of 1910. During this campaign the question of "clipping the wings" of the Lords formed an important issue. The Liberals were successful at the polls, and having repassed the finance bill in the Commons, sent it for the second time to the upper chamber, whereupon the Lords accepted the verdict of the country and gave their assent to the measure. It will be appreciated, of course, that this whole conflict between the Lords and the Commons was es-

sentially a party matter, as the House of Lords at this date was overwhelmingly Conservative.

The Parliament Act of 1911. But the Liberals were determined that the relations between the two chambers should be clarified in such a way that it would no longer be necessary to hold a general election in order to make the Lords knuckle under. Accordingly a measure designed to limit the powers of the Lords was introduced by the ministers into the House of Commons. This bill contained four chief provisions. *First*, it stipulated that money measures, when passed by the House of Commons, should become law one month after such passage, even though the Lords should withhold their concurrence. *Second*, it gave a definition of money bills and made provision that in case of disagreement as to whether a bill came within the definition the decision of the speaker of the Commons should be conclusive.¹³ *Third*, it provided that any other public bill passed by the House of Commons in three consecutive sessions, with an interval of at least two years between its first and final passage, should become a law on receiving the assent of the crown notwithstanding the failure of the Lords to approve the measure.¹⁴ *Fourth*, enacted that the maximum duration of a parliament should henceforth be five years instead of seven. But parliament, with both the Lords and Commons concurring, and with the royal assent, can at any time extend its own existence beyond this five-year term if an emergency so requires, and during both World Wars it did this, no general election being held until after hostilities had ended.

Its acceptance by the Lords. When the Parliament Bill of 1911 had passed the Commons, it went to the House of Lords which procrastinated by suggesting an alternate plan. The ministry thereupon served notice that another general election would be held unless the Lords accepted the bill and this threat was carried into effect. Once more the country stood by the Commons, thus assuring the enactment of the measure. Not, however, without a renewed flicker of resistance from the upper chamber which had to be cowed into submission by a threat to create new peers—as many as might be needed to pass the bill. In the end, many of the opposition lords abstained from at-

¹³ The definition is as follows: "Any public bill which, in the judgment of the Speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts or public money; the raising or guarantee of any loan or the payment thereof, or subordinate matters incidental to those subjects or any of them."

¹⁴ It is stipulated that this provision shall not apply to any measure extending the duration of parliament beyond its present maximum of five years. The two-year interval, to be exact, must elapse between the date of the first occasion on which the bill receives its second reading in the Commons and the date of its final passage for the third time. The House of Commons is authorized to direct in any bill, if it so desires, that the measure shall not become law unless and until it receives the assent of the Lords.

tendance and the measure passed by a rather narrow margin amid scenes of intense excitement. The Parliament Act of 1911 embodied the most important change that had been made in the constitution of the United Kingdom for more than a century.¹⁵

A further change. During the ensuing thirty-five years the problem of further constitutional change was pushed off the stage by much more urgent matters. Two World Wars, with an intervening economic depression, gave the British other things than the House of Lords to worry about. But with the victory of the Labor party in 1945 the future rôle of the upper House in the British governmental framework became once again a theme of public controversy. The new ministry, it appeared, was not ready to propose anything radical, but in 1947 it sponsored a bill to amend the Parliament Act of 1911 by reducing the suspensory veto of the Lords from two years to one. The measure passed the Commons, was held up by the Lords, and went into effect when the two-year period had expired.¹⁶

Proposals for the reorganization of the upper chamber. Proposals to change not only the powers but the composition of the House of Lords have been made on many occasions, especially during the past fifty years. The British House of Lords is like the Supreme Court of the United States in that any unpopular action is promptly followed by a clamor for a change in its structure or authority. At least a dozen plans for reforming the House of Lords have been brought forward from various quarters during this period, but all of them seemed open to serious practical objections. As one writer has pointed out, no plan of reform put forward by the Labor party has much chance of being accepted by the Conservatives, and no Conservative proposal can hope for co-operation from the Labor party.¹⁷

The latest attempt. This was demonstrated in 1948 when a committee representing all three political parties, Conservative, Labor, and Liberal, attempted to reach agreement on a plan which would have greatly reduced the size of the upper chamber by eliminating all hereditary members, basing membership wholly on appointment as a reward for distinguished public service. It would have made women eligible and provided that members should receive the same salaries as are paid in the House of Commons. While there was some approach to agreement on the points just mentioned, there was none whatever on the crucial issue as to what powers the reformed House of Lords

¹⁵ A full account of the long-drawn-out controversy between the two Houses is given in Emily Allyn, *Lords versus Commons* (New York, 1931). See also W. I. Jennings, *Cabinet Government* (Cambridge, 1936), pp. 326-335, and the lively account in George Dangerfield, *The Strange Death of Liberal England* (New York, 1935).

¹⁶ Known as the Parliament Act, 1949, it was introduced in the Commons in December, 1947 and became law without the Lords' assent on December 16, 1949.

¹⁷ Harold J. Laski, *Parliamentary Government* (New York, 1938), p. 98.

should be permitted to have and the tripartite conferences came to an end without accomplishing anything. In the election campaign of 1950 the Labor party did not force the issue into any prominence.

The future of the House. So the organization of the House remains unchanged. It is probably true, as John Bright once said, that a hereditary House of Lords cannot endure forever in a free country, yet it will doubtless continue to endure until something better to take its place is devised. Englishmen, as a rule, prefer to bear the ills they know than to fly to others they know not of. It is not practicable to have an upper House constituted like the Senate of the United States because Great Britain is not a federal state. The method which has been used in constituting the Council of the Republic in present-day France (namely, election by *départements* or counties) would be practicable in Great Britain, but that body has never been regarded by Englishmen as a model worth copying.

The basis of a bicameral system. Most people agree that an upper chamber in any well-organized government should serve as a check on the lower chamber, that it should provide a safeguard against hasty and ill-considered legislation. For that reason the members of the two chambers ought not to be chosen from the same districts in exactly the same way. On the other hand they ought not to be selected in such widely different ways that the two chambers will reflect irreconcilable points of view and get themselves into continual deadlocks. How to organize the two chambers on a different basis, yet on a basis not too different—that is a problem which Great Britain has not yet been able to solve.

Why not a single chamber? But why not abolish the upper House altogether and get along with a single chamber? More than thirty years ago a parliamentary conference (consisting of both lords and commoners) under the chairmanship of a distinguished student of comparative government, Lord Bryce, submitted a report which declared a two-house system to be essential in Great Britain. This report pointed out that there are at least four distinct and essential functions that cannot be well performed save by a second chamber. These four functions are as follows:

1. The examination and revision of bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.
2. The initiation of bills dealing with subjects of a practically non-controversial character which may have an easier passage through the House of Commons if they have been fully discussed and put into a well-considered shape before being submitted to it.
3. The interposition of so much delay (and no more) in the passing of a bill

into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be almost equally divided.

4. Full and free discussion of large and important questions, such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussions may often be all the more useful if conducted in an assembly whose debates and divisions do not involve the fate of executive government.

Nobody and everybody. Englishmen are in the habit of saying that the House of Lords represents *nobody* while the House of Commons represents *everybody*. But if the House of Lords were "reformed" and given a representative character the situation would be different. Then it would represent *somebody*. Like the American Senate it would attempt to take a coördinate share in lawmaking. The House of Commons would no longer have a *prima facie* claim to legislative supremacy; it could no longer assert itself to be the sole representative of the people. Naturally the Commons does not grow enthusiastic over a possibility of that sort. "I don't want to say a word against brains," said one of the characters in Gilbert and Sullivan's *Iolanthe*, "but with a House of Lords composed of people of intellect, what's to become of the House of Commons?"

A strength that arises from weakness. So the strength of the House of Lords, paradoxical as it may sound, arises from its weakness. By becoming weaker it has grown strong, or, at least, immune to attack. At best it can now delay legislation; it can no longer thwart the will of the popular House. With its fangs drawn it is no longer a menace to democracy, hence the need for reform has lost some of its urgency. It is an anomaly, of course, that so small a body as the British peerage should bulk so large in the affairs of a great nation, but no American need cross the Atlantic to find anomalies in an upper chamber. That one duke should have the equivalent of 10,000 votes cast by plain citizens is an absurdity, to be sure, but it is just as grotesque that Nevada, with a population of little more than 160,000, should have the same representation in the Senate of the United States as New York with more than 14,000,000. Americans will explain, of course, that this is because it was so stipulated in the Constitution of the United States more than 160 years ago, to which Englishmen will reply that the structure of the House of Lords has been embedded in the constitution of Great Britain for many times as long.

THE VALUE OF THE UPPER CHAMBER

General utility of the House of Lords. The essential functions which a second chamber ought to perform have been stated on the preceding page. To

what extent does the House of Lords perform them satisfactorily? On the whole it appears to be doing its job fairly well. It examines and revises non-financial measures. It insists, when the occasion arises, that ample time be given for a full public discussion of such bills before they become part of the law of the land. It compels sober second thought and gives opportunity for passions to subside. It says, now and then, to the House of Commons: "The opinion of the country seems to be badly divided on this matter. Suppose you hold up the bill until the people have a chance to discuss it further."¹⁸ On the other hand, the House of Lords has not shown itself disposed, during recent years, to go beyond its province and obstruct the passage of measures which the country is clearly in a mood to accept. It has accepted the diminution of its powers with as good grace as one might expect peers of the realm to show. Its members no longer display open resentment when great questions of public policy (such as the nationalization of the coal mines or the railroads) are virtually settled by the House of Commons alone. To quote once more those comic-opera interpreters of the British constitution, Gilbert and Sullivan:

The noble statesmen do not itch,
To interfere in matters which
They do not understand.

Although the House of Lords is in membership one of the largest among legislative chambers, it is one of the smallest in point of actual attendance, and these are experienced parliamentarians, many of whom have had careers in the Commons. It takes a lively debate to draw as many as one hundred members into the chamber, and it has been estimated that fewer than one hundred peers make more than one speech per year. The business of the House is done by a relatively small group of members who are experienced and interested in governmental affairs.

The course of bills in the Lords. The procedure followed by the House of Lords in considering the various measures which come before it is different from that of the Commons. In the Lords there are no standing committees for public bills. All bills, after two formal readings, are debated in Committee of the Whole House before being read a third time. Debates in the House of Lords, when they take place, cannot be shut off by using the closure. If amendments are adopted in the upper House, the measure goes back to the Commons for concurrence. Then the Commons either agrees to the amendments, or insists on its own way, or some compromise is reached by an informal con-

¹⁸ A good example of this was the acceptance by the Lords in November, 1949, of the Labor government's iron and steel nationalization bill, but not only after it had been amended to provide that it not go into effect until after the next general election. The actual result of the Lords' opposition was to delay the effective date of nationalization from May 1, 1950, to January 1, 1951. Of course, had the Conservatives won the general election of 1950 the bill would have been repealed at once.

ference. Failing this, the bill is deemed to have been rejected, and the Commons must then decide whether the measure is of sufficient importance to warrant its repassage in accordance with the procedure laid down by the Parliament Act as amended.

The high quality of the personnel of the Lords. There is a common impression that the House of Lords, being composed for the most part of men who have inherited their titles, is inferior to the House of Commons in the quality of its membership. Taking the entire personnel of the two chambers, this impression is doubtless correct, but if one were to select, let us say, the fifty ablest members of the Lords and set them alongside an equal number of the best drawn from the Commons, the Lords would not suffer badly by the comparison. The upper House contains in its ranks some of the foremost statesmen, jurists, theologians, scholars, financiers, and industrial magnates of the kingdom. Many of its members have been trained by long years of service in the diplomatic corps, in the dominions, or in the colonies. These are the men who do the business of the House. Of course there are peers, plenty of them, who possess neither ability, interest, nor experience in public affairs; but most of these spend their hours elsewhere. They rarely darken the doors at Westminster; in fact, some of them do not even come to be sworn in. The peers who regularly warm the red benches and speak the mind of the upper House are men who have graduated from the Commons, or who have administered affairs of empire, who have sat in cabinets or presided in high courts or gained their peerages by some other form of conspicuous service. So while the House of Lords is unrepresentative in the usual sense of the term it is not altogether unrepresentative of the best in British national life—in industry, finance, agriculture, commerce, law, religion, and scholarship. There are plenty of low-voltage peers, it is true, but most of them stay away from parliament. And there are, alas, some men of the same quality in the Senate of the United States—but they do not stay uncounted when the roll is called.

History. The most convenient sources of information concerning the early development of the upper chamber of Great Britain are Luke O. Pike, *Constitutional History of the House of Lords* (London, 1894); the same author's *Political History of the House of Lords* (London, 1901); and A. S. Turberville, *The House of Lords in the Eighteenth Century* (Oxford, 1927). A. F. Pollard, *The Evolution of Parliament* (new edition, London, 1926), is excellent on the earlier period. May and Holland, *Constitutional History of England* (new edition, 3 vols., London, 1912), contains much that is interesting for the period since 1760. For recent publications on the House of Lords, see Sidney D. Bailey, Ed., *The House of Lords*, (New York, 1954). See also Faith Thompson, *A Short History of Parliament* (Minneapolis, 1953).

Descriptive. A brief survey is included in F. A. Ogg, *English Government and*

Politics (2nd edition, New York, 1936), pp. 317-362. General descriptions of the House of Lords, its composition and powers, may also be found in W. R. Anson, *Law and Custom of the Constitution* (5th edition, Oxford, 1922), Vol. I, chap. v; J. A. R. Marriott, *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. I, chap. xv; A. L. Lowell, *The Government of England* (2 vols., New York, 1908), Vol. I, chap. xxi; W. Ivor Jennings, *Parliament* (New York, 1940); and D. H. H. Hemingford, *What Parliament Is and Does: Being an Introduction to Parliamentary Government in the United Kingdom* (New York, 1948).

The Interhouse Controversy. The earlier clashes between Lords and Commons during the past 100 years are described in G. Lowes Dickinson, *Development of Parliament during the Nineteenth Century* (London, 1895), and in J. H. Morgan, *The House of Lords and the Constitution* (London, 1910). Emily Allyn, *Lords versus Commons: A Century of Conflict and Compromise, 1830-1930* (New York, 1931), covers the later developments as well. A volume by Adrian Wartner on *The Lords: Their History and Powers, with Special Reference to Money Bills* (London, 1910) is useful on one phase of the subject.

Privileges, Immunities, and Present Membership. On matters relating to the legal status of the peerage the standard work is F. B. Palmer, *Peerage Law in England* (London, 1907). Mention should also be made of Sir Thomas Erskine May, *Parliamentary Practice* (15th edition, London, 1950). A. P. Burke's *Genealogical and Heraldic History of the Peerage and Baronetage*, commonly cited as "Burke's Peerage," gives detailed information concerning all holders of titles.

The Value of an Upper Chamber. Discussions concerning the purpose and value of an upper House may be found in Sir J. A. R. Marriott, *Second Chambers* (new edition, Oxford, 1927); H. B. Lees-Smith, *Second Chambers in Theory and Practice* (London, 1923); G. B. Roberts, *The Functions of an English Second Chamber* (London, 1926); R. A. MacKay, *The Unreformed Senate of Canada* (Oxford, 1926); W. R. Sharp, *Le problème de la seconde chambre et la démocratie moderne* (Bordeaux, 1922); and H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910). The chapter on this subject in J. S. Mill's *Representative Government* is still worth reading although it was written many years ago.

Proposals of Reform. The various proposals for reforming the House of Lords are dealt with in W. S. McKechnie, *The Reform of the House of Lords* (Glasgow, 1909); W. L. Wilson, *The Case for the House of Lords* (London, 1910); C. Headlam and A. D. Cooper, *House of Lords or Senate?* (London, 1932); Lord Merrivale, *The House of Lords: Its Record and its Prospects: Possible Reforms* (London, 1935); A. L. Rowse, *The Question of the House of Lords* (London, 1934); M. Lindsay, *Shall We Reform the Lords?* (London, 1948); and the *Report of the Conference on the Reform of the Second Chamber* (1918), commonly known as the Bryce Report. The indecisive results of the latest parliamentary discussion in connection with the Parliament Bill, 1947, can be read in Command Document No. 7380. This gives the final statement of the party leaders after conferences held from February to April, 1948.

CHAPTER IX

The House of Commons: the Suffrage

The individual is foolish, and the multitude for the moment is foolish when it acts without deliberation; but the species is wise—and when time is given to it, always acts right.—Edmund Burke

The long story of the suffrage. A history of voting would be a history of government, indeed a history of civilization. But if anybody with an antiquarian turn of mind should desire to study the evolution of the suffrage from mediaeval times to the present, no country would afford him a better field for his purpose than Great Britain. Men have been voting in that kingdom, under a variety of conditions and restrictions, for at least a thousand years. There has been no break in this continuity, even during epochs of civil war and revolution. Representative institutions passed out of existence in the great countries of the Continent during the seventeenth and eighteenth centuries but in Britain they hung on, although at times by a rather precarious grip. There has never been a single year, from the time of Alred the Great to the present day, in which Englishmen did not elect somebody to represent them somewhere—in township-mote or county court, in borough council or House of Commons.

The beginnings of popular suffrage. Mention has been made of the fact that knights of the shire, chosen by the representatives of the freeholders in the county court, were summoned to the Great Council at various times during the thirteenth century and that these county representatives became in time a regular element in parliament. It will also be recalled that the boroughs were summoned to send representatives to parliament and that these borough representatives combined with the knights of the shires to form the House of Commons. The knights were chosen at the meetings of the county court by the common assent of all the freeholders of the county; the borough representatives were elected by all the burgesses or freemen of the borough or

town. British parliamentary suffrage began, therefore, on a basis that was at least democratic in theory, with no precise distinction between the qualifications for voting in counties and boroughs. This was not the result of a revolution in 1215 or at any other date. The Great Charter may have been revolutionary in some of its provisions but it extended the suffrage to nobody who did not have it before. The right of the freeman to have a voice in the election of his local rulers far antedated the victory of the barons over John Lackland. It was, in theory at least, the earliest basis of English local government.¹

The reaction against it. But the suffrage did not forever remain democratic, even in appearance. In the reign of Henry VI (1429) provision was made that none should vote in the counties except those who held freehold land with a rental value of at least forty shillings per year. This was a sweeping disfranchisement inasmuch as many freehold estates, perhaps the majority of them, had a rental value of less than forty shillings. The "forty-shilling freeholder," however, determined the election of members of the House of Commons in the counties of England from that date to the passage of the Great Reform Act in 1832.

How the suffrage was narrowed. Meanwhile the suffrage in the towns was also narrowed, although not as a result of any special enactment. The theory that every freeman had a right to vote remained in existence, but the definition of a freeman became steadily less comprehensive. In some towns the list of freemen was confined to those who held land under certain forms of tenure, or who paid certain forms of local taxation. In others it was whittled down to gild-members or members of certain industrial organizations. In some boroughs, indeed, men could only acquire "the freedom of the town" by being born the son of a freeman, or by marrying a freeman's daughter, or by paying a fee into the town treasury. In very few towns were the requirements exactly alike; each developed its own rules, precedents, and practice. But in general, during the interval between the fifteenth and the nineteenth centuries, the borough suffrage everywhere grew more restricted; this development being assisted by the king who desired to control the House of Commons and found that towns with few voters could be more easily controlled than those which had a large number.

Mediaeval elections in England. Now it may seem at first glance surprising that the masses of the people, both in country and town, should have permitted the franchise to be so easily taken away from them. But this is only because not until relatively modern times have people come to look upon the suffrage as something worth fighting for. Nobody looked upon it in that

¹For a full account of English mediaeval suffrage and elections see M. McKisack, *The Parliamentary Representation of the English Boroughs during the Middle Ages* (New York, 1932).

light 500 years ago. No salaries were then paid to members of parliament from the national treasury; each county or town had to defray the cost of its own representation. Often the election went to anyone who could be induced to pay his own expenses, and sometimes there was great difficulty in getting anybody to do this. Towns occasionally sent petitions to the king asking that they be relieved of the burden of sending representatives to parliament. Much oratory has been spilled in declamations about the way "our Anglo-Saxon forefathers fought for the right to vote," but the sober prose of it is that nobody thought the right to vote worth fighting for until a couple of hundred years ago.

Suffrage rules become confused. It was only when the House of Commons began to get the upper hand in government that representation in it came to be looked upon as a privilege.² Meanwhile the suffrage requirements had become chaotic. In the counties every forty-shilling freeholder was entitled to vote, but there were many different forms of freehold tenure. In some towns the right to vote had been granted to nearly all the adult male inhabitants; in others not one per cent of the population were "freemen of the town." In some boroughs the suffrage included all "pot-wallopers," that is, all adult males who had possession of any premises in which food could be cooked. So it often happened that when a man's house burned down he left the chimney standing, and on the eve of an election might be seen kindling a fire in it as evidence of his political qualification. In others none but members of the municipal corporation could vote. Membership in this corporation might be obtained by birth, by marriage, by purchase, by grant—in a dozen different ways. Every town was a law unto itself. Whether a man could vote depended on where he lived.

Government by the few. Representation in the House of Commons, moreover, was not distributed according to population; every county and every borough, whatever its size, had two members. Under these conditions it is a travesty on the facts to say that the House of Commons, prior to the great reform of 1832, represented the people of Great Britain. The total population of Great Britain and Ireland in 1831 was about 24,000,000, of whom nearly 10,000,000 would have been entitled to vote under a system of manhood suffrage. As a matter of fact the number of those who actually possessed the right to vote was a good deal less than 1,000,000 at the most. England during the first quarter of the nineteenth century was not a democracy in fact. Nor was the United States, for that matter. Both countries were governed by the upper classes of society. As Blackstone put it, England was ruled by "the gentlemen of the kingdom."³

² For a full account see P. A. Gibbons, *Ideas of Political Representation in Parliament, 1651-1832* (Oxford, 1914).

³ See the panegyric on the government of England which concludes Book iv of Blackstone's *Commentaries*.

Inequality of representation in parliament. The worst feature of English government at this time was not the narrowness or diversity of the suffrage but the gross inequality of the counties and towns which sent two members each to parliament. No general redistribution of seats had been made for a long time. Meanwhile some boroughs and counties had stood still or diminished in population, while others had greatly increased. The Industrial Revolution, with its introduction of steam power and smoke-belching factories, had changed the face of the country. It drew off population from some rural districts until they had almost no inhabitants at all; on the other hand it crowded tens of thousands into the newer factory towns such as Manchester, Birmingham, Leeds, and Sheffield. Yet the depopulated boroughs kept sending members to parliament while the new centers of population got no increased representation and in some instances had no representatives at all. This was not the result of a sinister design on anybody's part; it was merely the product of the great economic change. Population had shifted; the distribution of seats in parliament had not. It was the old story of political institutions failing to keep pace with a new era that had come.

The "rotten boroughs." The result was a horde of "rotten boroughs" all over the country. Most of these were old towns from which the inhabitants had departed, leaving only the ruins of their homes and a well-filled graveyard behind them. What had been thriving towns at the beginning of the eighteenth century were being turned into sheep farms at the beginning of the nineteenth—raising wool for the new steam factories. "The shepe have become such greate devowerers and so wilde," lamented one writer of the time, "that they pluck up and swallow down the very men themselves."

Old Sarum and Corfe Castle. Old Sarum was a classic example of these ghost towns, a flourishing place in older days, which began to slip during the eighteenth century and drifted into the nineteenth without a single house inhabited. It had seven "freemen," however, all of them nonresidents, and these seven retained the right to elect two members of parliament. They did it, of course, from among themselves. The borough of Corfe Castle was another blighted constituency; on the eve of the great reform it consisted of a ruined manor house and a few dilapidated outbuildings. The owners of this ramshackle property likewise elected two members to the House of Commons.

Downton, Malmesbury, and Bute. The borough of Downton lived up to its name, for it was down under water, the sea having swept over it and made it an uninhabitable salt-marsh; but this catastrophe did not mean that Downton stopped sending members to parliament. A few nonresident freemen attended to that. Malmesbury had thirteen voters, no one of whom could read or write. They voted by a show of hands. The Scottish constituency of Bute, however,

was the prize pocket borough of them all. Its list of freemen contained one name. On election day this lone voter regularly appeared at the polling place, called the roll, answered to his own name, moved and seconded his own nomination, put the question to a vote, and was unanimously elected a member of parliament.

The speculation in seats. These decayed boroughs naturally fell a prey to speculators who bought them for the sole purpose of controlling the representation. In this way a parliamentary bootlegger sometimes managed to get a half dozen or more seats into his possession. The seats then became his "patronage" to sell or give away as he saw fit. Hence the origin of a term which has passed into the political vernacular of all English-speaking peoples. There is not much difference, in fact, between the English patron of the pre-Reform era and the American political boss of today. Often the patron had an eye to profit and put up the seats for sale to the highest bidder. This was not done *sub rosa*, but by open advertisement in the newspapers. There was a brisk demand for these seats, especially among the "nabobs" as they were called, men who had returned from India after making their fortunes. By spirited bidding they ran the prices up to a high figure and sometimes as much as three thousand pounds had to be paid for the privilege of writing "M.P." after a bourgeois name. The House of Commons, as "the best club in London," afforded an opportunity for social advancement. Lord Chesterfield in his famous letters to his son (1767) expressed disgust that even noble lords were profiteering in the sale of their pocket boroughs. Still, some very able men got their start in politics by the favor of patrons—as they have done in America through the favor of bosses. William Pitt entered the House of Commons as member for a pocket borough; so did Charles James Fox.

Electoral corruption. It should not be imagined, of course, that the majority of the members in the House of Commons, prior to 1832, were chosen in this way. But the proportion was sufficiently large to give these patrons the balance of power. It enabled them to block every project for widening the suffrage or redistributing the seats. Moreover, in counties and boroughs where the electorate was too large to be controlled by a patron, there was a great deal of open bribery. Some wealthy outsider, seeking to capture the seat, would come in with his gold. The voters would hold off until they got their price. The polling extended over a week, and in a close election the price went a little higher each day. In the last hours of the polling it sometimes rose to twenty or thirty pounds per vote. A "freeman of the town" who sold his vote at the top of the market had no need to work for a living during the rest of the year. "The House of Commons," said Pitt, "is not representative of the people of Great Britain; it is representative of nominal boroughs, of ruined and exter-

minated towns, of noble families, of wealthy individuals, and of foreign potentates." This, by the way, was the House of Commons which passed the Stamp Act, placed the taxes on tea, attempted to coerce the colonies, and provoked the American Revolution.

THE GREAT REFORM

The movement for reforming the suffrage. The movement for a reform of the suffrage and for a redistribution of seats began as early as 1775, but for various reasons it made slow progress. The excesses of the French Revolution gave it a setback. Then, for a dozen years, Europe was convulsed by the great conflict with Napoleon, and it was not until after the Corsican had been safely caged at St. Helena that the people of Great Britain could give due thought to their own domestic problems. The close of the Napoleonic War was immediately followed, moreover, by a wave of conservatism, a resurgence of autocracy such as often follows a great war. The ten years following 1815 were not favorable for the launching of political reforms. England was tired of Continental turmoils, anxious to live in tranquillity within her own sea-girt bounds, eager to build up her own industry, and disinclined to do anything rash. Reform had to await a change in the national temper.

Its connection with the need for social and economic reform. Great wars are often followed by conservative reactions, but they also create problems of economic and social reconstruction which cannot be solved by reactionaries. England after 1815 had become an industrialized country with millions of people huddled together in mushroom factory towns. Yet the authorities did not sense the fact that this centralization of the people meant new needs, new problems, and new ways of meeting them. Because of this official apathy there was no town planning, no provision for public water supply or sanitation, no serious attempt to prevent overcrowding in the houses occupied by the workers. The hours of labor were long and the pay was low. Women and children in large numbers were required to work under conditions which menaced the future of the race. A few social and economic reformers cried out in protest against the existing conditions, but they were looked upon as wild asses of the desert. (Pioneers of great reforms usually are). Nevertheless they kept on and soon aroused a far-reaching popular demand for laws in the interest of the factory worker, for a readjustment of the tax burdens which the war had imposed, and for an improvement in the conditions of urban life. To this clamor the unreformed House of Commons made no response, hence it gradually dawned upon the people that no program of social or economic betterment could be put into effect until parliament had itself been reconstructed. Political reform, in other words, must come first.

The final victory. Political reconstruction, however, was not an easy thing to achieve, for the obstacles were great. Peers and patrons were in the way. The Englishman's inherent conservatism, his fondness for old traditions, his aversion to drastic changes—these were hard to overcome. On the other hand, the new and influential industrial and business middle class wanted a fairer share of representation. They found an assortment of allies in the "utilitarian" philosophers, the radicals, and the Whig reformers. At any rate the movement for political reform did not show much progress until 1830 when, by a fortunate combination of circumstances, a Whig ministry came into power. The next year it ventured to bring in a reform bill. The House of Commons passed it; the Lords threw it out; the Commons passed it again. A bitter conflict then ensued between the two chambers and the issue was for a time in doubt. In some countries such an impasse would have led to civil war. But ultimately the Lords gave way and the Great Reform Act of 1832 went on the statute book. A revolution in the spirit of English government was accomplished without firing a shot.

Provisions of the Great Reform Act: 1. Redistribution of seats. The Act of 1832 is perhaps the most important statute ever passed by the British parliament. First of all it dealt with the redistribution of seats. The act did not provide for a general redistricting, nor did it adjust representation to the number of voters in each district, but it cleared away some of the most glaring inequalities. The rotten boroughs and pocket boroughs were for the most part obliterated from the list of constituencies. Some of the smaller boroughs were consolidated while others had their representation reduced from two members to one. In this way nearly 150 seats were gained for distribution among the more populous new towns and counties. The act gave at least one representative to every populous community.

2. Widening of the suffrage. In the second place the Great Reform Act overhauled the suffrage requirements. Parliament might have taken this opportunity to make the suffrage uniform in both counties and boroughs, but did not do so. The old distinction between county and borough suffrage was retained. In the counties the franchise was extended to include not only the forty-shilling freeholders but tenants of lands having certain higher rental values. In the towns a uniform suffrage was substituted for the old diversity of requirements, by enfranchising all "rate-paying occupants who were assessed on a rental value of ten pounds or more per annum," in other words any occupant of premises having an assessed rental value of a dollar a week or thereabouts. But it did not extend the suffrage to lodgers, or those who merely rented furnished rooms, hence it went far short of full manhood suffrage. The wage-earning working class was not yet enfranchised. Still, it is estimated

that the Act of 1832 added considerably more than 700,000 votes to the lists, thus nearly doubling the total number.

LATER SUFFRAGE EXTENSIONS

The Second Reform Act, 1867. While this measure quieted public clamor for the moment, it did not bring the reform movement to an end. The constituencies were still uneven; the secret ballot had not yet come into use; elections continued to extend over several days; and electoral corruption was still prevalent. Groups of militant reformers known as Chartists kept up a spectacular campaign for a new Magna Carta, a new charter of liberties which would guarantee manhood suffrage, equal constituencies, the secret ballot, annual elections, and other democratic reforms. Chartism did not succeed in its program, but the drift of public sentiment eventually became strong enough to compel a further widening of the suffrage. Strange to say, the Conservatives were the ones who fathered the Second Reform Act of 1867, a measure introduced by the cabinet of Benjamin Disraeli. This adroit statesman stole from the Liberals their best political ammunition.

A further extension. The Act of 1867 provided for a further redistribution of seats by taking members from the smaller constituencies and giving them to the larger ones. It also extended the suffrage in both counties and boroughs, more particularly by including "compounding householders" and all "ten-pound lodgers" in the borough lists.⁴ Although this extension stopped short of manhood suffrage, it added almost 1,000,000 voters to the electoral lists, or a larger group than had been admitted by the Great Reform Act of thirty-five years before.

From 1867 to 1885. Much tinkering with the electoral laws took place during the next two decades, mostly in attempts to remedy specific defects in the electoral system. The secret ballot was brought into use (1872); the practice of keeping the polls open for a whole week was abolished and elections were confined in each constituency to a single day. Finally, a drastic law for the suppression of corrupt practices was enacted (1883). A further extension of the suffrage was granted in 1884 and a considerable redistribution of seats took place in 1885 which finally ended the undue preponderance of the southern (nonindustrial) constituencies.

From 1885 to 1918. From this latter date to the close of the First World War there were no considerable changes in the system of electing members to parliament. Voting continued to be related, in some way or other, to the ownership or occupancy of property. But this was not so undemocratic an arrangement as it sounds, because owners, occupants, and lodgers constitute

⁴ That is, lodgers paying at least ten pounds a year as rental for their lodgings.

the great majority of the adult male population in any country. On the other hand the requirement that every voter should be an owner, a tenant, or a lodger did disfranchise a good many farm laborers, domestic servants (coachmen, butlers, and the like), as well as sailors and other persons whose occupations required them to move about frequently from place to place. Moreover, none of these electoral reform acts extended the suffrage to women.

The demand for women suffrage. There was a movement for female suffrage in Great Britain before 1914, but it had made little headway. During the war years (1914-1918), however, it gained strength by reason of the willingness with which thousands of British women went to work in munition factories, thus releasing large numbers of men for active military service. Public opinion swung over to the view that the women whose sacrifices helped to save England ought to be given a share in governing England. Yet it did not seem wise to precipitate a controversy over this issue while the war was raging. So the problem of settling the basis of a new electoral law which would grant equal suffrage and make various other changes without starting a controversy in parliament was referred to a large conference representing all the political parties and presided over by the speaker of the House of Commons. This conference agreed on a report, some provisions of which were in the way of compromises to secure unanimity. On the basis of this report a new electoral law was drafted.

Chief provisions of the Act of 1918: 1. Abolished the old distinction between county and borough suffrage. This statute, which passed parliament without difficulty, is known as the Representation of the People Act (1918).⁵ The old distinction between county and borough constituencies was retained in this statute, but the suffrage qualifications were now (for the first time) made uniform in both. Hence the distinction between county constituencies and borough constituencies is no longer of any practical importance. A borough member is one who represents a large town or city; a county member is one who represents a group of smaller towns, villages, and rural districts. But both are chosen at the same time, in the same way, and by the same suffrage. Each county and borough member represents approximately the same number of people. In 1944 the size of the House of Commons was temporarily increased from 615 to 640 members in order to provide for the splitting up of some constituencies which had become too large, but in 1948 it

⁵ 8 George V, c. 64-65. A supplementary statute, known as the Representation of the People Act, No. 2 (10 & 11 George V, c. 35), was passed in 1920. It will be noted that the English practice is to designate acts of parliament by titles which give a clue to their contents. Thus, the Housing of the Working Classes Act, the Defence of the Realm Act, the Government of Ireland Act, the Government of India Act, and so on. To the student of political history this has an obvious advantage over the American plan of tagging measures with the names of congressmen. Such designations as the Sherman Act, the Clayton Act, the Mann Act, the Taft-Hartley Act, and the like convey no intimation as to what the law deals with.

was again somewhat reduced in size.⁶ No member of the House now represents more than 100,000 and in most cases the quota is considerably below that figure—approximately 60,000. In the United States the quota or representation for the federal House of Representatives is several times higher.

2. Gave voting rights to all adult male citizens. The main provisions of the 1918 Act, however, related to an enlargement of the voters' lists. The franchise was widened to include all British males twenty-one years of age or older who met the residence requirement or could qualify for the "business vote" by occupying a business property although resident elsewhere. But the act put a limit upon plural voting. Prior to 1918 a man who occupied property in several constituencies could vote in each of them, and as the elections were not held everywhere on a single day he could travel around from one place to another and cast his ballot in each. Thus it sometimes happened that a man who had an office in London, a summer cottage in Brighton, a shooting lodge in Scotland, and a country house in Surrey could qualify as an elector at each of these places and cast several ballots at a general election. The Act of 1918 provided that he could vote in no more than two constituencies at a single election, as an occupant in one and as a resident in the other. Finally, in 1948, this dual franchise was abolished.

The university franchise. By ancient custom, the Universities of Oxford and Cambridge enjoyed parliamentary representation. The electorate for these members was, also by ancient usage, the Convocation of Oxford and the Cambridge Senate. The former consisted of the chancellor, vice chancellor, doctors of all faculties, and masters of arts. The Cambridge Senate was composed in substantially the same way. The Act of 1918 gave representation as well to other universities. Oxford and Cambridge retained two members each, while London had one and the lesser English universities two among them. Trinity College, Dublin, was represented before the establishment of the Irish Free State. The Scottish universities had three members and the University of Wales and Queen's University, Belfast, one apiece. The university graduates, therefore, also enjoyed a plural franchise—voting either as business occupants or residents of a constituency and also, if they chose, as university electors. Defenders of this franchise argued that it produced a high type of member.⁷ Those who opposed it, mainly of the Labor party, claimed that although many university members were elected as "independents," they were in fact Conservatives, and so the university vote gave that party an unfair advantage. Like the business franchise, it was abolished by the 1948 Act.

⁶ The number is not definitely fixed, but varies according to a formula. At present the House has 625 members.

⁷ For example, Lord Beveridge, before he became a peer, was a member for Oxford University.

3. Gave voting rights to women. The question of female suffrage gave the parliamentary leaders a great deal of difficulty in 1918. Logic seemed to dictate that if women were admitted to the suffrage, they should be admitted on equal terms with men. But even logic has to reckon with the realities, and everyone knew that Great Britain had suffered a serious reduction in manpower by reason of the war. If the two sexes were placed on an equality, therefore, the women would considerably outnumber the men on the voting lists. Even those who favored woman suffrage were not sure that the creation of a preponderantly feminine electorate would be a wise action to take at a time when the nation was still in the throes of a struggle for existence (February, 1918), with the outcome of the war still in doubt.

The age limit removed. After much deliberation, therefore, a compromise between logic and the interests of British manpower was reached by the establishment of an age restriction on woman suffrage. It provided that women should not be eligible to vote until the age of thirty. Hardly was the ink on the statute dry before an agitation for the removal of the age differential was begun. It took ten years to achieve success, but in 1928 an equal franchise bill was brought in by a Conservative ministry and passed both Houses. The voting age for women was reduced to twenty-one and several million additional names were thus put on the parliamentary voters' lists, bringing the total electorate up to about 27,000,000. Since 1928 it has risen to over 34,000,000.

Disqualifications. There are certain disqualifications which render both men and women ineligible to be enrolled as voters at British parliamentary elections. The list of disqualifications is sometimes facetiously stated to include "criminals, idiots, infants, aliens, paupers, and peers." Criminals and mentally deficient persons, while confined in public institutions, are not permitted to vote.⁸ Nor may anyone be enrolled unless he is a British subject by birth or naturalization. The term "British subject," however, includes everyone who owes allegiance to the king and is not restricted to the inhabitants of the British Islands. It includes Canadians, Australians, and South Africans, as well as Englishmen, Irishmen,⁹ Scotsmen, and Welshmen. Members of the peerage are excluded from voting at parliamentary elections¹⁰ because they adequately represent themselves in the House of Lords; but in municipal elections this exclusion does not apply. The right to vote at all elections, both parliamentary and municipal, was formerly withheld from paupers, that is, from those who are supported by the public poor relief funds; this disquali-

⁸ Mentally deficient persons, if not so confined, may vote if they satisfy the polling officer that they understand what they are doing.

⁹ The Representation of the People Act, 1949, confers the vote upon "British subjects and citizens of the Republic of Ireland." Irish law has no reciprocal arrangement; Englishmen may not vote in the Irish Republic.

¹⁰ For certain exceptions see above, p. 126.

fication was abolished by the Act of 1918, but paupers who are maintained in public institutions do not get their names on the voters' list because they are not deemed to have satisfied the residence requirement. Voters may also be disfranchised by the courts on conviction for certain corrupt practices at elections.

The march of democracy. Thus, by successive steps, the British suffrage has been widened and made democratic. In 1831 the parliamentary voters of Great Britain numbered less than one-twenty-fourth of the population; from 1832 to 1867 the proportion was about one-sixteenth. From 1867 to 1885 it stood at one-twelfth, but from the latter year to 1918 it went up to one-seventh. The Act of 1918, by admitting a large number of women voters, raised the proportion to one-third, and the Equal Franchise Act of 1928 hoisted it to considerably more than one-half. Thus the British electorate moved from 4 per cent to over 60 per cent of the population in the course of 100 years. This of itself will give one some idea of what has been termed "the irresistible march of democracy."

The Prereform Suffrage. The best history of the English parliamentary suffrage prior to 1832 is that given in the two volumes on *The Unreformed House of Commons: Parliamentary Representation before 1832* by Edward and Annie G. Porritt (2nd edition, 2 vols., Cambridge, 1909). A later work in the same field is L. B. Namier, *The Structure of Politics at the Accession of George III* (2 vols., London, 1929). J. Holland Rose, *The Rise and Growth of Democracy in Great Britain* (London, 1897), gives a comprehensive account in briefer form. The story of the "rotten boroughs" may be found in Charles Seymour and Donald P. Frary, *How the World Votes* (2 vols., Springfield, Mass., 1918), Vol. I, chaps. iv-v. Mention should also be made of G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1913); G. M. Trevelyan, *Lord Grey of the Reform Bill* (New York, 1952); and P. A. Gibbons, *Ideas of Political Representation in Parliament, 1651-1832* (Oxford, 1914).

Since the Act of 1832. The later extensions of the suffrage are discussed by O. F. Christie, *The Transition from Aristocracy, 1832-1867* (London, 1927); Homersham Cox, *Reform Bills in 1866 and 1867* (London, 1868); J. H. Park, *The English Reform Bill of 1867* (New York, 1920); Charles Seymour, *Electoral Reform in England and Wales, 1832-1885* (New Haven, 1915); and Sir Hugh Fraser, *Representation of the People Acts, 1918-1921* (London, 1922).

A discussion of recent legislation and its workings may be found in J. F. S. Ross, *Parliamentary Representation* (2nd edition, London, 1948); and D. E. Butler, *The Electoral System in Britain 1918-1951* (New York, 1953).

CHAPTER X

The House of Commons: Nominations and Elections

Representative institutions will probably perish by ceasing to be representative. . . . A tendency to democracy does not mean a tendency to parliamentary government or even toward greater liberty—W. E. H. Lecky

The constituencies. Members of the House of Commons are the only persons connected with the central government of Great Britain who are chosen by popular vote. All others owe their positions to inheritance or appointment. The country is divided into parliamentary districts or constituencies and each constituency elects one member. The present House of Commons contains 625 members, distributed as follows: England, 506; Wales, 36; Scotland, 71; Northern Ireland, 12. According to the Constitution of the United States there must be a redistricting after each decennial census. In Great Britain there was until recently no such requirement either by law or by custom; constituencies were rearranged at irregular intervals as parliament directed. In 1944, however, permanent boundary commissions were established for England, Scotland, Wales, and Northern Ireland. Following the recommendations of these commissions, new electoral maps were adopted by parliament in 1948.

How they are mapped out. It is interesting to note the way in which partial redistricting is to be done in the future. The boundary commission is supposed to keep a close eye upon population shifts in its area and to recommend such adjustments in the boundaries of individual constituencies as it may deem advisable. The principles to be followed by the commissions in doing this have been laid down by parliament in resolutions which were agreed upon by all three political parties. The commission holds local inquiries or hearings and thereafter drafts recommendations which are embodied in an

order-in-council, placed before parliament, and adopted by resolution in the usual way.¹

No gerrymandering. This procedure might seem to give opportunity for gerrymandering, but English political traditions are strongly against anything of the kind and there has been virtually none of it. All the constituencies, so far as is practicable, follow historical boundaries; they include a single town, or two contiguous boroughs, or part of a large city, or what is left of a county after the towns have been taken out. They are hardly ever constructed by piecing together parts of different boroughs of different counties. When a county or a borough is parceled into two or more constituencies these are known by names, not by numbers as in the United States. Thus a member of parliament represents the West Derby division of Liverpool, or the Darwen division of Lancashire, whereas a member of Congress sits for the tenth Massachusetts district, or the eighth Illinois congressional district.

The duration of a parliament. In Great Britain a general election must be held at least once in every five years according to law, but parliament is supreme in its power to prolong its own life when it decides to do so.² It did so during both World Wars, thereby affording a striking illustration of the way in which the British constitution can be adapted to the needs of the hour. The Congress of the United States, no matter what the emergency, cannot prolong its own life for a single day. Whether in war or peace, there must be a congressional election every second year. British elections come at long or short intervals, as the occasion demands. Two general elections may be held in one year, as in 1910, or three in successive years, as in 1922-1924. This is because the prime minister can at any time advise the crown to dissolve parliament and issue writs for a general election. On the other hand, there may be a ten-year interval between elections, as was the case in 1935-1945. Parliament merely decided, in this instance, to prolong its own life to double the regular maximum term.³

The uncertainty. In general the members of the House of Commons do not like the idea of being cut short before their full five-year term expires, for an election campaign means expense to them and the risk of defeat. But the prime minister is the generalissimo, and it is he who decides, with the help of his cabinet, whether good strategy dictates an appeal to the country.

¹ It is not mandatory that the ministry adopt the boundary commission's recommendation or prepare an order-in-council embodying it, but it is expected to do so unless a good reason to the contrary appears. A boundary commission is required by statute to make a report at least once in every seven years.

² But it should be noted that a measure to prolong the life of a parliament is outside the scope of the Parliament Act, and hence cannot in any circumstances be passed without the assent of the Lords.

³ It did so, however, by a series of annual extensions. It is generally agreed that only extreme emergency justifies such action, and in fact it has been done only during the two World Wars.

Having made up their minds, however, the ministers can keep the decision secret until their own campaign plans are in readiness. On a few occasions they have been able to "spring an election" upon their opponents, catching the latter unawares. But the opposition has learned that it pays to be vigilant, and nowadays it is seldom caught napping. Still, the privilege of choosing the time for an appeal to the country gives the ministerial forces a distinct advantage.

Fixing the election date. So nobody can safely predict when the next British election will come. But whenever the party in power seems to be losing ground, or when new issues create dissension in its ranks, the political pot begins to simmer. Then the newspapers begin to announce "from an authoritative source," or "on trustworthy information," that a dissolution of parliament is being considered by the ministry. In the end, after various false alarms, an official announcement settles the matter by giving the exact dates for the nomination and the polling. The interval between this announcement and the date for the nominations is usually brief, sometimes only two or three weeks. That being the case, the political parties do not delay the selection of their candidates until the date of the election is known. They have them in readiness long before the announcement comes.

NOMINATIONS

How nominations are made. The methods by which the parties choose their candidates are not alike in all the constituencies, and in any event these methods can be best explained in connection with a survey of party organization and activities a little later. But the official nomination procedure is very simple. All that a candidate need do, in order to get his name on the ballot, is to file a nomination paper signed by ten qualified voters of the constituency. This document he hands to the "returning officer" on the day designated for the making of nominations. The returning officers are named *ex officio*; in a borough the mayor always serves, and in a county the sheriff. When a constituency spreads over more than one borough or county the home secretary designates which mayor or sheriff is to act.

The papers and the deposit. On the day set for making nominations, the returning officer attends at the town hall or court house or other convenient place and the nomination papers are handed to him by the candidates or their agents. One hour is allowed for this purpose; then the nominations are closed. Although only ten names are required on nomination papers it is customary for the candidates to gather a much larger number, sometimes several hundred. This is done by way of advertising the candidate's popularity. With his nomination paper each candidate must also place in the hands of the returning officer a deposit of one hundred and fifty pounds sterling. This re-

quirement of a deposit is intended to discourage frivolous or hopeless candidacies. If the candidate receives more than one-eighth of the total vote on election day his deposit is returned to him; otherwise it is forfeited and turned into the national treasury. Some deposits are forfeited at every election.⁴

Simplicity of the plan. Apart from this requirement the most distinctive feature of the British nomination system is its simplicity. There are no primaries as in the United States. So far as the official requirements are concerned anybody can have his name submitted. Getting ten signatures is no trick in a constituency of many thousand voters. But the deposit serves as a deterrent to those who have no organized party support and merely desire to gratify their personal vanity by getting their names on the ballot. No candidate, moreover, may announce himself as the representative of a political party unless he has been formally "accepted" or endorsed by the regular party officials. And without a party endorsement his chances of election are next to nil in the great majority of constituencies. At any rate it is only on rare occasions that more than three candidates appear in any single-member constituency, and until the rise of the Labor party there were usually not more than two. Sometimes only one candidate is nominated, and when the time for filing papers has expired he is declared elected unopposed, or, as the English say, "by acclamation."

Qualifications of candidates: nonresident candidates. For many centuries no one could be nominated for election to the House of Commons unless he possessed a property qualification. This requirement has been abolished. Virtually any British subject who is qualified to be a voter may stand for election in any constituency.⁵ Women are eligible. It is not necessary, either by law or by usage, that the candidate be a resident of the constituency which he (or she) seeks to represent. Nonresident candidates are common, although not so common as they used to be. In Great Britain, as in every other country, the voter naturally prefers one of his own neighbors to a stranger, provided other things are equal or nearly so. But British voters are much more ready than those of other countries to sink this preference if the outsider is a man of distinctly superior qualifications. In every House of Commons there are members, sometimes a good many of them, who sit for constituencies in which they do not reside and never have resided. Mr. Gladstone, in his long term of service, sat for five constituencies, one after another, and did not live in any

⁴ As a matter of practice the candidates do not have to suffer this penalty. Each of the party organizations has an "insurance fund" out of which to cover the loss.

⁵ An odd exclusion, however, is one that debars from candidacy all clergymen of the Established Church in England or Scotland and also of the Roman Catholic Church. Certain public officers (such as judges) are excluded from candidacy because of the offices they hold. Peers who are ineligible to vote (see above, p. 126) cannot be legally nominated, but this ineligibility does not exclude peeresses except the few who hold peerages in their own right.

of them. There is a great advantage in this absence of a residential requirement, for it enlarges the field of selection, gives a good man more than a single chance, and thus helps to maintain high standards of candidacy.⁶

ELECTIONS

The polling day. The polling takes place on the same day throughout Great Britain.⁷ Nominations are made on the eighth day after the date of the royal proclamation summoning a new parliament; the polling is held on the ninth day after the nomination. Prior to 1918 the returning officer in each constituency was given a certain amount of leeway in fixing the election date, with the result that the polling did not take place everywhere on the same day. Certain counties and boroughs would vote on Monday, others on Tuesday, some more on Wednesday, and so on for a whole week or longer. Clerks and counters moved from one constituency to another, being hired by the returning officers. As they were experts, the polling machinery ran smoothly and errors in counting the votes were rarely found.

On the other hand, this habit of stringing the elections over a week or two had some objectionable features. It prolonged the tension and excitement of a general election. It gave the constituencies which voted last an advantage over those which voted first. They could see how the election was going and swing to the winning side, which not infrequently they did. When half the constituencies had voted, the final result was usually predictable. This took most of the excitement out of the election before it was finished. So the Act of 1918 provided for a one-day general election as in the United States. In all the constituencies the polling must now take place between nine in the morning and nine at night. In American congressional elections, each state, and sometimes each city, fixes its own hours for opening and closing the polls.

How the list of voters is compiled. The register of voters in each constituency is made up and revised in the spring and autumn of every year without any reference to whether an election is impending. Thus the list is always in readiness. The function of preparing it belongs to the registration officer in each constituency. He is the town clerk of a borough, or the clerk of the county council, as the case may be. Prior to 1918, when the suffrage was tied up with the ownership or occupancy of property, it was the practice to compile the voters' list from the assessment rolls. But since the establishment of universal suffrage it has become necessary to secure the names by resort to some-

⁶ One of the most striking differences between the House of Commons and the American House of Representatives is to be found in their respective percentages of lawyers. In the House of Commons the members of the legal profession rarely number more than 15 per cent; in the House of Representatives the proportion is rarely less than 40 to 50 per cent.

⁷ There is a minor exception in the case of the Orkney and Shetland islands.

thing like census-taking methods. The compilation is not made, as in most American states, by requiring the voters to come to a certain place and be registered. The British registration officer appoints canvassers who go about from house to house collecting the names of all those who are qualified to vote. These canvassers make their rounds with a copy of the last previous list, finding out at each house what changes have taken place during the preceding year. When they present their reports to the registration officer, the latter makes up a provisional list which is then posted in various public places—at the town hall, the post office, sometimes even in the vestibules of the churches—with an announcement that all claims and objections must be made within a certain interval.

Revising the list. Anyone who finds that his name is not on this provisional register may apply to the registration officer to have it put on, and anyone can object to the inclusion of a name already there. The registration officer, after hearing such claims and objections, makes known his decision in each case, but this decision may be appealed to the courts. After an interval has been allowed for the making of such appeals the register is closed and thereafter no changes can be made in it until the next revision. Attached to the regular list is a supplementary register of absent voters. This includes the names of persons who, by reason of their being in the military or naval service, or for some other good reason, are likely to be absent from the constituency when an election is held and hence have asked to be put on the special register.

The list, when revised, is held infallible. In Great Britain, the register of voters, when finally closed, is deemed to be infallible. Under no circumstance may anyone vote unless his name is on it. The law is explicit on this point and permits no exceptions. It matters not that a name was left off inadvertently and through no fault of the voter. No officer or court has authority to make changes in the final register. No one may “swear in” his vote at the polls, as is sometimes permitted in the United States. And, conversely, if the name of any person is erroneously placed on the list he is customarily allowed to vote even though he is obviously ineligible. There is some question, nevertheless, as to whether the inclusion of a name on the register is absolutely conclusive evidence that the owner of the name has a right to vote. For although the election law explicitly provides that anyone whose name is on the register shall be entitled to vote, it adds the qualifying proviso that this shall not “confer a right to vote on any person who is subject to any legal incapacity to vote.” It would seem, therefore, that a person who is under age, for example, need not be permitted to vote if his name should happen to get on the list in error.

The ballot. The ballot used in parliamentary elections is short, simple, and bears no party designation. It contains merely the name, address, and vocation of each candidate. The names are set down in alphabetical order and each name is followed by a blank space in which to mark a cross. The ballot is hardly larger than an ordinary envelope. Ballots are arranged in pads like counterchecks on a bank counter, and attached to each ballot by a perforated line is a numbered stub or counterfoil. The purpose of this counterfoil is to enable the poll clerks to keep track of the ballots. These counterfoils are torn off before the ballots are placed in the box and are kept to tally with the total number of votes cast. The ballots are printed at the public expense under the supervision of the returning officer and are furnished by him to each polling place. The returning officer also designates the polling places and assigns to each poll a deputy returning officer or presiding officer of the poll, together with a poll clerk for every 500 registered voters. Each candidate is also allowed to have an agent inside the polling room.

Polling places. The polling places are usually located in public buildings—at the town hall, a school, or a courthouse—but it is often necessary to hire space in private buildings as well. Within the polling room are screened compartments in which the voter marks his ballot. Then he drops the ballot into the box and walks out with a feeling that he has done his duty as a free-born Briton. The ballot box is merely a covered steel box with a slot in the lid. It is not a complicated churn-like contrivance with a handle for inserting the ballots, such as is often used at American elections. And voting machines, built like giant cash registers, are not yet used in Great Britain. When the poll is closed the ballot box is sealed and sent to the town hall or other headquarters where the counting is to take place.

Challenging voters. The presiding officer of the poll, the poll clerks, and the agents of the candidates are all sworn to secrecy. The only function of the agents is to check off the names of those who vote and guard against the personation of voters. They have a right to challenge any voter on the ground that he is not the person whose name is on the list, but not on any other ground. Challenges are decided by the presiding officer of the poll and there is no appeal from his decision. Ordinarily if the voter makes a sworn statement that he is the person whose name appears on the list the presiding officer will accept this statement.

Absent voting. Absent voting has been permitted in parliamentary elections since 1918. Persons who are on the absent voters' list or are unavoidably absent from the constituencies in which they are enrolled as voters may appoint proxies to vote for them. These proxy papers are filed with the returning officer. No person except a near relative or someone who is himself a voter

in the constituency may serve as a proxy. Instead of appointing a proxy to vote for him, however, the absent voter may obtain a ballot in advance of the election and send it to the returning officer by mail; but this alternative is not open to him unless he mails the ballot from somewhere within the United Kingdom. A voter who is absent at sea or outside Great Britain must use the proxy method in order to have his vote counted.*

Counting the votes. When the poll is closed, and the ballot boxes brought to a central place, the counting is done by the returning officer and his assistants. The procedure of counting the ballots is quite different from that followed in the United States, where the work is done at each polling booth. In Great Britain the first step is to verify the number of ballots in each box with the total as shown by the poll records. Then all the ballots from the various polling places are mixed together. This is done in order that no one may know how the vote stood at any particular polling place. Only the totals for the whole constituency are announced; hence no candidate can ever tell from the official count whether he ran strong in one section and weak in another.

No post-mortems. This will sound strange to the ears of any American politician. Every candidate for Congress insists on knowing the result in each precinct, and those who are defeated sometimes spend a good deal of time in a post-mortem analysis of the figures. But at a British election, after the thousands of ballots have been shuffled beyond any such possibility, they are divided into bundles according to the candidates for whom they have been marked, and the ballots in each bundle are then counted. Spoiled ballots are taken out and put in a special envelope. In spite of this centralized counting a considerable proportion of the results are announced before midnight on the day of the election. Within a certain space of time any defeated candidate can demand and obtain a recount.

Proposals for electoral reform. In British parliamentary elections, as in American congressional elections, a plurality is sufficient. The candidate who polls the highest vote takes the seat even if he fails to have a majority. This is not a matter of much consequence in the United States where the contest is almost always between candidates of the two major political parties. But in England with the names of three party candidates sometimes on the ballot it has now become common for the winner to poll fewer votes than his two opponents. This, indeed, has sometimes happened in more than one-third of the constituencies. Hence there has arisen a movement for some form of "proportional representation," such as has been given a trial in various continental countries as well as in a few American cities. This, of course, would

* A proxy paper, unless canceled in writing, remains effective so long as the maker's name continues on the absent voters' list.

necessitate the abandonment of single-member constituencies and the substitution of multi-member districts or regions, together with the placing of party designations on the ballots and the distribution of seats in proportion to the number of votes polled by each party. Such a departure from traditional British electoral practices would be a radical one, and the movement for proportional representation has not been making much headway in the United Kingdom. At the present time the Liberals are the only ones strongly favoring the plan since their party would stand to gain most from its adoption.

CAMPAIGN METHODS

Election campaigns: 1. In the old days. English parliamentary elections are now conducted in dignified and orderly way, with very little hubbub and virtually no corruption. It was not so in the old days. Some of Hogarth's drawings give us an idea of what an English election was like in the middle of the eighteenth century. Hired bullies went about intimidating voters. Day after day, while the voting continued, new hogsheads of beer were tapped at the expense of the candidates. Fights between the supporters of each party were of nightly occurrence and no Marquis of Queensberry rules applied. Heads were broken and eyes blackened in the name of patriotism. An election in those days turned bedlam loose in the town. Then, when the last vote had been polled and counted, the successful candidate was "chaired" by his friends—carried unsteadily above the heads of the crowd with a motely procession of inebriates following him. It took England some time to recover from the headache of a general election in the days of the Georges.

2. At the present time; the choice of candidates. But now all this is changed, and something ought to be said about contemporary British campaigning, for the methods differ a good deal from those used in American congressional elections. In every British constituency there is, as will be explained later, a local association or "party branch" and a committee for each party. Each party also has its national or central organization. The local associations are responsible for choosing their respective candidates, but if no good local candidate is available, or if sufficient funds cannot be raised in the constituency, the central office is usually asked to help. It responds by "recommending" some nonresident candidate who is able to pay his own election expenses or for whom the national organization is willing to put up the funds. In the latter case, if the recommended candidate is "adopted," the central committee exercises a considerable influence upon the local campaign. Even among local aspirants for the party nomination the influence of the central organization is often a matter of consequence, the measure of its influence being the extent to which the local campaign has to be financed

from central headquarters.⁹ One of the best ways for an aspiring young man to get into the *House of Commons* is to do effective organizing work at the national party headquarters and eventually get recommended to some constituency which is shy of good parliamentary timber. Some outstanding English political leaders have made their start in that way. Others have begun their careers as local government councillors, while many Labor M.P.'s got their start as trades union officials.

The electioneering begins early. In any case, it is desirable that the candidates be placed in the field early, for no man knoweth the day or the hour when an election may come. Such matters are not regulated by the calendar but are in the lap of the gods—and the prime minister. It is also desirable that the candidates should begin their campaigns early by speaking at gatherings whenever invited, and by taking every means to broaden their range of acquaintance in the constituency. So they appear at public functions of every sort, take an active hand in every good cause, and put their names on each subscription list that comes around. In other words, they submit to a good deal of polite blackmailing and try to do it with smiles on their faces. All this is colloquially known as “nursing a constituency,” and the zeal with which some of the Labor candidates have outnursed their rivals is highly instructive.

“Nursing” a constituency. Usage demands that a candidate shall be open-handed, if he can afford it, and that he shall keep on nursing his constituency after he has been elected. Does the parish church need a new bell? Or is the local boy scout troop raising a fund for a trip to London? Has the village cricket club a small deficit to be paid off, or is someone needed to provide a prize for the game on a national bank holiday? Candidates and members are panhandled for all such things without compunction. Individuals, as well as organizations, come forward with their palms turned up. There are legal limits to what a candidate may spend for election expenses; but there are no limits on his contributions to charity or to any other public cause when an election campaign is not in progress.

How it is done. Nursing a constituency is not merely a matter of spending money. It involves time and patience also. The candidate must be in evidence at church fairs and parish picnics. He must show himself, betimes, at Rotary Club luncheons—for the “service clubs” have now invaded England. He must greet all and sundry with a cordial handshake, call them by name, and show an interest in their personal affairs.¹⁰ In the campaign he must address rallies, submit to heckling, and canvass voters to some extent. It is no longer possible for the candidate to make a personal call on all the voters in his con-

⁹ In the Labor party it has become the rule that the choice of a local Labor candidate must be submitted to headquarters for approval.

¹⁰ For an intimate account see Frank Gray, *The Confessions of a Candidate* (London, 1925).

stituency. He must get his friends and supporters to do most of it for him. Yet Gladstone once called at 2,000 houses in the constituency of Newark, pulling the doorbells and asking for votes. He liked it, so he said—and won the election.

But no amount of nursing will ensure a candidate's election if the tide is swinging strongly against him. In most cases he will come through or fall with his party in the nation as a whole. Local conditions do not usually determine the result in individual constituencies. "The successful candidate is almost invariably returned to parliament not because of his personality nor because of his judgment and capacity, but because of his party label. . . . His own electioneering is far less important than the impression which his party creates in the minds of the electors."¹¹

Manifestoes and meetings. As soon as the date of a general election is announced, each candidate usually issues an address or manifesto to the voters of the constituency and broadcasts it through the mails. In this circular he emphasizes his party allegiance or his independent views. The laws permit each candidate to send one circular free of postage. Meetings are then arranged, usually in halls, but also on the street corners as is the fashion in American cities. At these meetings, even before the candidate has had his say, the members of the audience are permitted to ask questions. The privilege is mainly utilized by voters whose attitude is hostile—hecklers, they are called, because their aim is to heckle the candidate into saying something that can be used against him.

Heckling. Heckling usually leads to a rapid fire of repartee between the floor and the platform while the audience displays its leanings by the relative amount of applause which it bestows upon the candidate and his hecklers respectively. Only a quick-witted candidate with a ready tongue can come through this sort of campaigning with success. Even when the candidate is a woman, the heckling goes on. It adds zest and humor to the rallies. Lady Astor, the first woman to be elected to the House of Commons, at one of her rallies, was queried by a brash fellow from the back of the hall: "Lady Astor, don't you sometimes wish you were a man?" "Of course I do," she replied. "Don't you?" The saving grace of this heckling procedure is the practice of giving everybody, candidates and hecklers, a square deal. It would not be tolerable but for the British tradition of fair play. Although heckling detracts from the decorum of an election campaign and contributes very little to the elucidation of the issues, the voters like it and would strenuously object to its discontinuance.¹² Hence there is much complaint that the use of the radio by

¹¹ W. Ivor Jennings, *Cabinet Government* (Cambridge, 1936), p. 362.

¹² In the 1950 campaign the Conservative party actually conducted training classes in the gentle art of heckling so that party volunteers might more effectively harass the opposition candidates.

candidates is going to take most of the liveliness out of English election campaigns. You can turn off the radio but you can't heckle it.

Political advertising in British campaigns. To some extent the candidates appeal to the voters through newspaper advertisements and by posters on the billboards. Not so much "literature" is sent to voters through the mails as in America. Some candidates employ "sandwichmen" who walk up and down the principal streets with placards tied to them fore and aft. On them are printed the party slogans and various catch-phrases importuning the people to mark their ballots for somebody "and world peace," or for somebody else "and lower taxes," or whatever slogan seems to fit the time and place. Cartoon posters play a prominent part in English campaigns and some of them are very forceful in the impressions which they manage to stamp on the public imagination. In the art of political cartooning England is ahead of most other countries. The billboards, during an election campaign, afford material for some interesting studies in the psychology of propaganda.

Personal canvassing. The most striking difference between British and American campaign methods is to be found in the vastly greater emphasis which British politicians place upon the personal solicitation of votes. There was a time when candidates for Congress were in the habit of "heeling" their districts, going from door to door in quest of support, but the number of voters in a congressional district is now too great for this procedure. A certain amount of personal canvassing is still carried on in the United States by each candidate's helpers, but this is not his main reliance for success at the polls. In England the personal canvass is reduced to a science. Each political party opens committee rooms in all parts of the constituency and at these rooms the names of all the voters in the neighborhood are arranged by streets. Friends and supporters of the candidate are then given blocks of names to be canvassed.¹³ Each name is written on a separate card with a blank space left for the canvasser's report. The cards, after the voters have been visited, are brought back to the committee room marked "For," "Against," or Doubtful." All the doubtful voters are then made the target of whatever influence or persuasion can be brought to bear. Attempts are also made to secure converts from among those who have been reported hostile. Nobody is overlooked in a well-organized campaign.

The cost of getting elected. Less money, on the whole, is spent in English than in American political campaigns. This is partly because money for campaign funds is not so easily raised in Great Britain as in the United States, and partly because an American congressional district contains so many more voters than a British constituency. Many years ago parliament passed a statute known as the Corrupt and Illegal Practices Act which aimed to eliminate

¹³ The hiring of canvassers is not permitted.

electoral frauds and set a maximum limit upon campaign expenditures. This statute, and amending acts, makes a distinction between *corrupt* practices and *illegal* practices. Corrupt practices include bribery, intimidation, personation, falsifying the count—things which involve moral turpitude. Illegal practices include doings which are not wrong in themselves but which tend to make an election undignified, unduly expensive to the candidates, or in some other way objectionable. Hence the illegalities comprise the hiring of canvassers, or bands, or too many committee rooms, or paying for conveyances on election day.

Limits on campaign expenditures. The laws also set a limit on legal campaign expenditures. This limit is now fixed at £450 plus two pence per registered voter in county constituencies and £450 plus one and a half pence per registered voter in borough ones—the differential being based on the idea that a rural voter is harder to reach. In a city of 60,000 voters this allows a maximum of a little over \$2,300. All campaign expenditures must be made through an authorized agent of the candidate, whose appointment is certified to the returning officer of the constituency. After the election a sworn statement of all disbursements must be rendered, including the personal expenses of the candidate which are limited to £100. This last-named limitation deserves mention because personal expenses are not usually required to be reported after American elections. At American elections the maximum for campaign expenditures in a congressional district is set at \$5,000, but the number of voters is several times larger than in a British constituency.

Election protests. A defeated candidate for the House of Commons may petition to have an election invalidated by alleging corrupt or illegal practices on the part of the victor or his agents. Such petitions are not heard, as in America, by the legislature itself; they are handled by the judiciary. When an election protest is filed in Great Britain the issue is referred to one of the higher courts, where two judges are assigned to hear the evidence without a jury. The court then certifies to the speaker of the House of Commons its report confirming or unseating the member-elect. This report is then approved by vote of the House. But if the matter in dispute relates to the legal qualifications of the elected candidate, and not to the manner of his election, it is investigated by the House itself and is not referred to the judges of the high court for a recommendation.

Newly elected members take their seats at once. As a rule the members of parliament are brought together at the earliest possible moment after a general election. This is in accord with the spirit of the British political system which demands that members of the ministry, who constitute the administrative branch of the government, shall continuously possess the confidence and support of a majority in the House of Commons. And the only sure

way to determine whether the ministry possesses this support is to call the House into session. So long as a ministry continues in power after a general election without summoning parliament it is technically administering the affairs of the country without a mandate from the people.

History. The history of British electoral methods is covered in Edward and Annie G. Porritt, *The Unreformed House of Commons* (2nd edition, 2 vols., Cambridge, 1909), and in Charles Seymour, *Electoral Reform in England and Wales, 1832-1885* (New Haven, 1915). *Rogers on Elections* (16th edition, 3 vols., edited by William Powell, London, 1897) is a standard English treatise on election law; but a more up-to-date volume is W. E. Eyles, *Parliamentary and Local Elections* (London, 1936). See also G. R. Haskins, *The Growth of English Representative Government* (London, 1948); J. F. S. Ross, *Parliamentary Representation* (rev. edition, London, 1948); and D. E. Butler, *The Electoral System in Great Britain, 1918-1951* (London, 1953).

Election Procedure and Campaigns. Present-day election procedure is described in Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921), Vol. I, pp. 11-65, and in J. L. Seager, *Parliamentary Elections under the Reform Act of 1918* (London, 1921). Frank Gray, *The Confessions of a Candidate* (London, 1925) is an informing and amusing little volume. Another entertaining book is V. Adams, *Letter to a Young Politician* (London, 1946). Attention should also be called to P. G. Cambray, *The Game of Politics* (London, 1932); John M. Gaus, *Great Britain: A Study in Civic Loyalty* (Chicago, 1929); Lord Beaverbrook, *Politicians and the Press* (London, 1925); J. K. Pollock, *Money and Politics Abroad* (New York, 1932); and the chapter on "Public Opinion and the Parties" in Herman Finer's *Theory and Practice of Modern Government* (2 vols., New York, 1932), Vol. I, pp. 444-480, which gives a graphic account of campaign methods. Another useful book is R. B. McCallum and A. Readman, *The British General Election of 1945* (Oxford, 1947). See also H. G. Nicholas, *The British General Election of 1950* (London, 1951); D. E. Butler, *The British General Election of 1951* (London, 1952). Analyses of the 1950 election are contained in J. K. Pollock, L. H. Laing, and others, *British Election Studies, 1950* (Ann Arbor, 1951).

Proportional Representation. On the proportional representation issue reference may be made to J. H. Humphreys, *Practical Aspects of Electoral Reform* (London, 1922); J. F. Williams, *The Reform of Political Representation* (London, 1918); G. Horwill, *Proportional Representation: Its Dangers and Defects* (London, 1925); C. G. Hoag and G. H. Hallett, Jr., *Proportional Representation* (New York, 1926); and also the smaller volume by the same authors on *Proportional Representation—The Key to Democracy*, published by the National Home Library Foundation (Washington, 1937). Current literature on the subject is listed in the monthly issues of the *National Municipal Review*, published in New York.

A 16 mm. sound film (twenty minutes) portraying British election procedure from the nomination of the candidates to the announcement of the final result can be rented for classroom use at a nominal cost from the British Information Services (30 Rockefeller Plaza, New York City).

CHAPTER XI

The House of Commons: Its Organization

With all humble and due respect to Your Majesty . . . our privileges and liberties are our right and due inheritance no less than our lands and goods; . . . they cannot be withheld from us, denied or impaired, but with apparent wrong to the whole state of the realm.—The Commons' Apology of 1604

A house with a history. "Six hundred talking asses, set to make laws, and to administer the concerns of the greatest empire the world has ever seen." In one of his irritable moments (which came all too frequently) Thomas Carlyle thus epitomized the most interesting of imperial legislatures.

As a representative lawmaking body the British House of Commons has no rival in age, for nearly six centuries have run their course since "the faithful Commons" began to function as a separate chamber. But it is not age alone that gives the House of Commons its high place among the lawmaking bodies of the present day. It is a gathering of members with virtually unlimited authority. Parliament and the House of Commons are to all intents one and the same thing. The House has supremacy in lawmaking; it controls the finances of the realm, fixes the jurisdiction of the courts, and dominates the action of the crown. It used to be said that the House of Commons was the best club in London, and while that designation no longer applies to it, there is no legislative chamber that commands a keener rivalry for admission.

The older meeting-places. For many centuries the House of Commons has held its sessions at Westminster, a city which has now become a part of Greater London. Originally it met in the chapter house or refectory of Westminster Abbey, a structure which dates from the time of Edward the Confessor, last of the Saxon kings. Then the Commons moved to St. Stephen's Chapel within the palace of Westminster, where it continued its sessions right through the eras of Tudors, Stuarts, and Hanoverians until 1834, when the palace was gutted by fire. Thereupon the new palace of Westminster, or

the Houses of Parliament, as the great structure came to be called, was erected during the years 1837-1852. During the Second World War a portion of the structure, including the meeting-place of the House of Commons, was destroyed by fire during a German air raid (1941), but has now been rebuilt according to its original plan. Meanwhile the Commons held its sessions in the chamber of the House of Lords, while the latter moved into a smaller spot known as the King's Robing Room.

Where the House now sits. The location of the Houses of Parliament is on the left shore of the Thames midway between Chelsea Bridge and the Tower of London. Covering an area of nine acres they form a vast edifice containing more than twelve hundred rooms, the largest building in Europe with the exception of the Vatican. The architecture of the building is Tudor Gothic and it is said to be the most impressive Gothic structure in existence.¹ In the heart of the pile is a great central hall; to the south of this hall is the green chamber of the House of Commons; and to the north of it the red chamber of the House of Lords. Reaching out around these two great chambers is a labyrinth of lobbies, corridors, committee rooms, offices, retiring rooms, and other subsidiaries. In various parts of the building likewise there are libraries, dining halls, and smoking rooms, as well as living quarters for certain officers of parliament such as the speaker, the clerk, and the sergeant-at-arms.

The Commons' chamber. The room occupied by the Commons is oblong in shape with a broad aisle running down the center. At one end of this aisle is the entrance; at the other end the speaker's chair is placed. There is a sliding brass rail or barrier at the entrance, alongside which sits the sergeant-at-arms. None but members are permitted to pass this entrance, which is called "the bar of the House." On either side of the aisle are long benches upholstered in green leather, rising tier on tier. The members sit (or sprawl) on these benches, with no desks in front of them. No seats are assigned to individual members. It is odd, by the way, that this "best club" should tolerate such deficient accommodation. By crowding the benches and using some reserved space in the side galleries it is possible to provide seats for about 450 members; but the total membership of the House is more than 600, which means that with anything like a full attendance many are compelled to stand.

The front benches. But anything like a full attendance is a rare occurrence. Three hundred is deemed to be a good turnout unless something of great interest is under discussion. Although no seats are regularly assigned, those members who support the ministry customarily occupy the benches to the speaker's right while members of the opposition sit on his left.² The two

¹ Not all critics agree with this estimate. H. G. Wells once described it as looking like the illegitimate child of a late Gothic cathedral and a Flemish town hall.

² When the ministerial party has a large majority, however, the overflow goes to the left also.

front benches which face each other nearest the speaker's chair are known as the Treasury bench and the front Opposition bench respectively. The custom of the House is that members of the ministry sit on the one and the leading personages of the Opposition on the other.

The English theory of representation. Although members of the House are elected by districts or constituencies they look upon themselves as representatives of the United Kingdom at large. They do not think of their own districts first, last, and all the time as many American Congressmen do. The House is both a representative and deliberative body; but deliberation is stressed more than representation. Is it proper that this should be so? Should a legislator be guided by his own conscience and patriotism or should he always defer to the interests and desires of the constituents who elected him?

Edmund Burke's view of it. That is an old question. A hundred and seventy years ago Edmund Burke dealt with it on the hustings at Bristol, and his speech has become a classic on one side of the controversy. Burke declared that a member of the House ought to maintain the most unreserved communication with the voters of his constituency; he ought to discover their wishes and give such desires great weight. To that extent he should serve as their delegate. "But his own opinions, his mature judgment, and his enlightened conscience," Burke went on to say, "should not be sacrificed by a Member of Parliament to any man, or any set of men, constituents, or outsiders." A member's conscience is a "trust from Providence, for the abuse of which he is deeply answerable." He does not derive his conscience from the laws or the constitution. "Your representative owes you not his industry only, but his judgment also, and he betrays instead of serves you if he sacrifices it to your opinions."

Some years later, at the election of 1780, Burke returned to a defense of his position. In another striking speech he declared to his constituents: "I did not obey your instructions. No, I conformed to the instructions of truth and nature." But this defense did not avail. The resentment of the Bristol voters against Burke's defiance of their wishes was too strong to overcome and he was obliged to retire from the House, badly beaten. During the past century the constituency of Bristol has been roundly condemned by political philosophers for having placed its own selfish interests ahead of parliamentary independence, and thus repudiating so distinguished a representative; but are there many election districts in any country that would not do the same if the issue were boldly presented to them as it was in this instance?

How the House begins its work. On the first day of the session the members of the Commons assemble in their own chamber. If it is a new parliament, that is, a parliament meeting for the first time after a general election,

the members must begin by electing a speaker. But by an ancient tradition they cannot do this until the lord chancellor, in the name of the crown, directs it to be done, and by usage he does this from his place in the House of Lords. So the commoners spend a few minutes in a buzz of conversation until the official messenger of the Lords (commonly known as Black Rod),³ appears and invites the House to come across the hall. Whereupon, headed by the clerk of the House, the commoners troop through the great corridor to the House of the Lords where they stand in silence while the lord chancellor announces, "His Majesty's pleasure is that you proceed to the choice of some discreet and learned person to be your speaker." Then the commoners, without a word in reply, wander back to their own chamber and with the clerk of the House as their temporary mentor proceed to do as they have been bidden.

Electing a speaker. The election of a speaker, as will be indicated a little later, is usually a mere matter of form and takes but a moment. The choice must be approved by the crown, but this also is a mere formality, the royal approbation being announced to the Commons by the lord chancellor. The speaker then takes the oath of allegiance, and the members, in groups of five at a time, do likewise. Then comes another call to the House of Lords to hear the speech from the throne.⁴ Preceded this time by the sergeant-at-arms, the members once more betake themselves to the gilded chamber where they crowd into the rear portion of it and into the galleries as best they can.

The speech from the throne. The speech from the throne is delivered either by the monarch in person or by someone whom he designates for this duty. It is never a long address and its delivery usually consumes but a few minutes. As has already been mentioned, it is prepared by the prime minister in consultation with his cabinet. It comments upon the general state of the realm, adds a paragraph or two on foreign relations, foreshadows the more important government measures which are to be introduced, and invites the House of Commons to grant the appropriations needed for carrying on the government. But whatever the speech may contain, the king has had little or nothing to do with its preparation. He may, and sometimes does, have a poor opinion of it. "Did I deliver the speech well?" asked George III on one occasion. "Very well, Your Majesty," was the reply. "Well, I'm glad," answered the king, "for there was nothing in it."

The dummy bill. When the speech is finished the commoners return to their own chamber where the speech is reread to them by the speaker. Before this is done, however, the House advances a dummy bill through its first stage.

³ His full title is "Gentleman Usher of the Black Rod." His insignia of office is an ebony rod tipped with gold.

⁴ In the case of a newly elected parliament the election of the speaker takes place on the first day and the speech from the throne is delivered on the day following.

This is done to demonstrate that it can do business on its own authority, without waiting for a message from the crown. The bill selected for this purpose is always the same, namely, "A Bill for the Better Preventing of Clandestine Outlawries." It has been given its first reading at every parliament for over 100 years, but is never advanced to a second reading.

The address in reply. Then the House proceeds to debate an "address in reply" to the speech from the throne. This address is always in the same form, being merely an expression of loyalty to the crown and of satisfaction with the recommendations made. Its adoption is moved and seconded by two private members from the ministerial side of the House who are designated for this purpose by the prime minister. The opposition may then propose amendments to the address, in which case the first debate of the session is precipitated. As a rule, however, the address is adopted without change and the House is then ready to plunge into its routine business.

The regular sittings. The House of Commons normally meets on Mondays, Tuesdays, Wednesdays, and Thursdays, at quarter to three o'clock in the afternoon.⁵ On Fridays it meets at eleven in the morning, but usually continues until mid-afternoon. These Friday sittings are reserved for private business, motions, petitions, and notices. The other forenoons are kept free for committee work. Most sittings of the House last through the afternoon and often into the evening. In such cases there is no regular adjournment for the evening dinner hour, but the chamber is usually well emptied between the hours of seven and nine, unless business of an exciting nature is before the House. The rule is that opposed business may not be proceeded with after eleven o'clock at night unless on motion of a minister; but unopposed business may be continued for a half hour later. At 11:30 P.M. the House adjourns unless certain specified measures are under consideration, in which case it may remain in session all night and even through the whole of the next day.⁶ The Friday sittings always close at 4:30 P. M. no matter what business is under consideration.

The small quorum. Despite this possibility of all-night sessions, the rules of the House permit the application of the closure in order to shut off debate, as will later be explained; and the ministers regularly ask the House to limit debate in this way whenever the dilatory tactics of the opposition are seriously interfering with the progress of government measures. Forty members of the House constitute a quorum, which is only about 7 per cent of the entire membership. In the American House of Representatives the requirement is a majority, or 218 members. Although the actual attendance at sittings

⁵ In the 1945-1946 session the House agreed to meet at 2:15 and adjourn at 9:45 P.M.

⁶ The longest continuous sitting without adjournment was one which lasted from Monday afternoon until Wednesday morning, during the session of 1881.

of the House of Commons is relatively slim, many other members are within reach in the lobbies, the smoking room, the library, the restaurant, or during fine afternoons, on the terrace. They are at hand when needed—if any question is pressed to a vote. But when the House is plodding its way through routine matters the back benches yawn in emptiness. In fact a great deal of business is done with fewer than forty members present, in other words without a quorum, for the speaker pays no attention to the quorum requirement unless some member asks for a count.

THE SPEAKER

The speaker. The speaker is the most conspicuous figure in the House.⁷ Despite his title, he never speaks in debate nor does he say more than a minimum in any other connection. He is supposed to speak *for* the House, not *to* it. His position is as old as the House itself and his title is derived from the fact that he alone, in early days, had the right to speak for the House of Commons before the king. Originally the speaker's chief function was to take petitions and resolutions from the House and lay them before the king, for it will be recalled that in early days the House of Commons was a petitioning rather than a lawmaking body. The House besought the king to redress grievances, and the king complied when he felt so inclined. The speaker was merely the bearer of these numerous and sometimes unwelcome requests. Hence his post in early days was no sinecure, for if the monarch happened to be out of humor, Mr. Speaker sometimes found himself hustled off to the Tower.

Some notable speakers. The first to bear the title of speaker was Sir Thomas Hungerford in 1376. For several centuries the office was usually held by a lawyer, and some noted jurists figure on the lists of speakers, including Sir Thomas More and Sir Edward Coke. When the crown and parliament came into conflict, as so often happened during the Stuart era, the speaker had to be a rare diplomat in order to keep from incurring the wrath of the one or the other. Students of English constitutional history will recall, for example, the case of Sir William Lenthall, who was speaker of the House when Charles I strode into the chamber with a troop of soldiers and tried to arrest five of its members. But the offending members had been warned and were gone from the chamber before the king arrived. Advancing to the speaker's chair, the king demanded to know whether any of the five members were present. Lenthall fell on his knees and replied, "May it please Your Majesty, I have neither eyes to see nor tongue to speak in this place save as this House is

⁷ In addition to the speaker, the chief officers of the House are the clerk and the sergeant-at-arms. Both are appointed by the crown on the advice of the prime minister and both hold office for life. The clerk and his assistants are in charge of the House records; the sergeant-at-arms has various ceremonial functions and is the agent of the House in the exercise of its authority.

pleased to direct me." "I see," said the king, "that my birds are flown," and with that he stalked out of the House amid cries of "Privilege! Privilege!"

How the speaker is chosen. According to the rules of procedure the House itself elects its speaker at the beginning of each new parliament and he serves for the duration of the parliament, be it five weeks or five years. But in point of fact an incumbent speaker is always re-elected, provided he is able and willing to serve. This is true even though there has been a change in the party control of the House. Although the choice of a speaker must be approved by the king, it is inconceivable that this approval will ever be refused, for the selection is really made by the prime minister before the House acts at all. In other words, the prime minister selects the speaker after consultation with the members of his cabinet and after assuring himself that the choice is generally acceptable to the House. The nomination is then made and seconded by two private members in order to perpetuate the fiction that the choice is that of the whole House and not that of the ministers. Both the House and the king accept this nomination as a matter of course, for neither could refuse their concurrence without registering a lack of confidence in the ministry.⁸

The picturesque pantomime. So, when the prime minister has chosen his man, all else is mere routine. The so-termed "election by the House" is not an election but a pantomime. The clerk starts the proceedings. An ancient custom forbids him to utter a syllable, so he merely points with his right forefinger at some member of the House whose name has been given to him as mover of the motion. This member thereupon rises and moves that so-and-so "do take the chair of this House as speaker." Then the clerk, in the same dumb pantomime, indicates the other member who has been picked to second the motion. The speaker-designate then rises in his place and humbly submits himself to the will of the House, which acclaims him with cheers. Then he makes a little speech of appreciation—and it is the only speech that he will ever make in the House so long as he remains speaker.⁹

The speaker a nonpartisan. The speaker, from the moment he takes the chair, ceases to be a party man. He discards his party colors, be they buff, or blue, or red. He is no longer a Conservative, a Liberal, or a Labor partisan. He attends no more party gatherings and is not called into consultation on any matters of party policy. He must be a neutral in politics. This neutrality, moreover, is not a fiction, as is shown by the fact that the speaker is almost never opposed for re-election in his own constituency. At each general election his constituency (in accordance with a local party armistice) sends him back

⁸ The approval of the crown has never been denied since the principle of ministerial responsibility became recognized.

⁹ For a detailed account of the procedure see N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 124-130.

to parliament unopposed—so long as he remains speaker. When a member of the House of Commons is chosen to the speakership, therefore, he need give no further thought to the repair of his own political ramparts. He has made his calling and election sure.

Prestige of the office. No wonder the speakership is regarded as a prize, an office not only of great honor but of long tenure. Its emoluments are also substantial. The speaker receives a liberal salary; he has an official residence in Westminster Palace, and he gets both a pension and a peerage when he retires.¹⁰ But every rose has its thorn, and the speaker must accept with his office a sentence of exile from politics. That comes hard to one who likes to wage battle. Whether in entertaining his friends at dinner, or in recognizing members who desire to speak, or in ruling on points of order, he must act with the impartiality of a chief justice. If he has personal and political likes or dislikes, as most public men have, he must somehow manage to keep them submerged.

The speaker's work. Even when called upon to give the casting vote in case of a tie, the English speaker does not act in accord with his own political or personal opinions. He breaks a tie by voting in obedience to certain well-established principles. If, for example, his negative vote would determine the defeat of a measure while his affirmative vote would prolong its consideration, the speaker votes "Aye." If a tie comes on a proposal to adjourn the debate, he votes "No." If he be in doubt as to how he should vote, or as to the proper ruling on any question of order or privilege, he inquires from the clerk of the House, who is a skilled parliamentarian. The speaker's rulings on points of order are final; they cannot be appealed to the House. The speaker may, if he desires, submit any questions to the House for its opinion and may be guided by its decision, but when he makes a ruling on his own responsibility there is no overriding it. The House, on the other hand, can suspend its own rules by a majority vote at any time and thereby circumvent a speaker's ruling, but it very rarely finds occasion for doing so. The rules are suspended now and then, but not for this purpose.

How the House opens. The speaker's chair is a high-canopied throne at the head of the main aisle. Below and in front of it is the clerk's table. At the appointed hour for opening a sitting of the House the speaker's procession formally enters the chamber. Prayers are read by the chaplain; the mace is laid on the table and the speaker counts the members to ascertain the presence of a quorum. If forty members are not in the chamber, he takes a sandglass

¹⁰ Both the peerage and the pension are matters of usage. There is no statutory provision that the speaker shall have either. But when a speaker retires it is the custom of the House to present an address to the crown stating its willingness to vote the money for a pension if the crown asks for it. The peerage, of course, is within the gift of the crown without parliamentary action. In 1928 the retiring speaker, Mr. J. H. Whitley, declined this honor.

which is kept at his right hand and turns it over. Meanwhile the bells in the corridors, lobbies, reading rooms, smoking rooms, and library begin to tinkle. The sand takes about two minutes to run from one of the glass compartments into the other and if a second count at the expiration of this interval discloses fewer than forty members, the speaker may adjourn the sitting.¹¹ The same procedure is gone through whenever anyone, after the sitting has begun, raises the question of a quorum. Adjournments for want of a quorum take place very seldom, for it is a rare occasion when fewer than forty members are not somewhere within call. It is the business of the "whips" (of whom more will be said hereafter) to see that these members are rounded up when needed.

ROUTINE PROCEDURE OF THE HOUSE

The rules of the House. There is a common impression among Englishmen that the House of Commons, unlike other legislative bodies, has no printed rules. This popular impression is the basis of the oft-told tale about a new member who on the opening day asked for a book of rules. "There is no book of rules," was the reply. "Then how am I to learn the rules of the House?" queried the neophyte. "By breaking them, sir," came the answer. It is true that the House has nothing called a book of rules but its "standing orders" amount to the same thing, although it may be added that these standing orders do not cover the whole procedure of the House, much of which rests upon usage. And the usages are not all to be found in any printed book.¹² Many years of parliamentary experience are required to familiarize a member with all the intricacies of parliamentary procedure, and in that sense it can truthfully be said that new members learn the rules by breaking them and being called to order.

Their permanence. Unlike those of Congress, the rules and standing orders of the Commons are permanent.¹³ They do not have to be readopted after each general election. Nor have they the rigidity of congressional rules, inasmuch as they can be suspended at any time, or amended, or repealed, by a majority vote. One might think this a dangerous power to place in the hands of the majority, but it has not been abused. When the rules of the House are suspended it is usually for the sole purpose of expediting business, with the consent of the minority, and not as a means of putting legislation through by steam-roller methods.

Nature of the rules; the "question time." Most of the standing orders

¹¹ If however, the business before the House be the consideration of a message from the crown, it is proceeded with despite the presence of fewer than forty members.

¹² Most of them, however, are in Sir Erskine May's book on parliamentary procedure, which is the English parliamentarian's Bible, just as Asher C. Hinds' *Precedents* serves a like purpose in the American House of Representatives.

¹³ It is usual, nonetheless, to adopt additional sessional orders at the beginning of each session.

deal with the allocation of time for different classes of business (such as government measures, private bills, private members' bills, and questions) and with the course of procedure which these various matters must take. Measures introduced by the ministry, as will be more fully explained later, have the right of way. Private members' bills are crowded into odd hours. At the commencement of each daily sitting a limited amount of time, not exceeding an hour, is set apart for questions. This is a feature of English parliamentary procedure which has no counterpart in American legislatures. These questions, which may be asked by any member, are addressed to the minister within whose field the matter belongs, or if the minister be a member of the House Lords, to his representative in the Commons. No member may ask more than four questions at a single sitting. Save in exceptional cases it is required that due notice of intention to ask questions shall be given and the questions then appear on a printed list, which each member receives at the beginning of the sitting. The questions are restricted to requests for information and must not contain any "argument, inference, imputation, epithet, or ironical expression." But some questions come perilously near offending in this way and the speaker of the House, in such cases, may reframe them or even reject them altogether. The minister to whom a question is addressed may decline to answer it if it deals with some matter of diplomatic or domestic policy which ought to be kept confidential.

Character of the questions asked in the House. When "question time" arrives in the House, therefore, the members flock into their seats, for the interrogations and answers are a daily source of enlightenment—and often of amusement. "I beg to ask the chancellor of the exchequer question number one," says a member from one of the rear opposition benches. There is a fluttering of leaves as everyone turns to the question as it stands printed on the Orders of the Day. Then the chancellor of the exchequer, or his parliamentary secretary, rising from the Treasury bench, proceeds to read the answer from the typewritten sheets in his hand. Sometimes it is a long explanation; sometimes a single curt sentence. Following the explanation, supplementary questions may be asked, but no debate or discussion follows the giving of replies.

Compared with the interpellations. Herein the procedure differs widely from the interpellation which has characterized procedure in the legislative bodies of Continental European countries. In the case of an interpellation the minister's reply has always been followed by a debate and a vote. If the vote is unfavorable the minister must resign. But when a minister answers any question in the House of Commons there is no way of determining whether a majority of the members regard his answer as satisfactory. The House merely

proceeds to the next item on the question paper. At the close of the question period, however, any forty members can precipitate a discussion of a minister's reply by rising in support of a motion to adjourn. Then, if the speaker of the House accepts this motion as falling within the principles on which such motions are permitted, a debate is set for the same evening. But this procedure is not common. Large numbers of questions are placed on the Orders, many of them dealing with very trivial matters. They average from 150 to 200 per day.¹⁴ Some years ago a committee which investigated the possibility of cutting the expenses of government made an estimate that the preparation of answers cost the English taxpayer about \$7.50 per question.

Value of the question privilege. But members of the Commons value their right to ask questions and would not permit it to be curtailed. The moral effect upon the ministers is good, for they know that any administrative action, however unimportant, may be dragged out into the glare of publicity. Hence they must be vigilant during every question hour. Many of the questions may seem trivial, but the ministers have learned that more may lurk in a question than appears on the surface. An innocent-looking query is sometimes propounded with intent to draw a noncommittal answer. Then comes a supplementary question which discloses what the questioner is really gunning for. The ministers are aware of all this (having been themselves the framers of questions while in opposition) and are not easily trapped.

The importance of the question hour, with all that it implies, has not been sufficiently appreciated by foreign students of English government. It is at least a partial check upon those bureaucratic tendencies which tend to appear in every government. It keeps the experts responsive to a body of laymen. Ministers get irritated at the flood of questions, and their subordinates (who have to prepare the answers) blaspheme the members who frame them; but the private citizen has no reason to complain. The question hour in the House of Commons is probably worth all that it costs the British taxpayer.

Debates in the House. While there is virtually no opportunity for debate in connection with the questions, there is room for plenty of it at various stages in the passage of legislative measures. Most speeches in the House of Commons are short; it is quite unusual for anyone to speak longer than an hour, although this occasionally happens when measures of great importance are under discussion. The longest speech, according to the records, was a deliverance by Brougham who spoke for more than six hours in 1818 "to a thin and exhausted House." Prynne's historic plea for the life of Charles I (1648) occupied almost the same length of time, and Gladstone on one oc-

¹⁴ If the end of the question hour arrives before all the questions have been answered, the remaining answers are printed in the official report of the House proceedings. Also, with the agreement of the questioner, some questions are given this printed answer only.

casion spoke for five hours.¹⁵ No time limit is fixed by the rules. But there is a limit to the patience of the members, and even the whips cannot always keep a quorum when long-winded orators take the floor. Speeches, whatever their length, are recorded verbatim and published in bulky volumes known as the *Parliamentary Debates*, or more commonly as *Hansard*.¹⁶ An hour's speech occupies fifteen or sixteen columns of this publication, hence a single debate may occupy a hundred pages or more.

THE COMMITTEE SYSTEM

Committee of the House. In legislative bodies throughout the world a large part of the preliminary work is assigned to committees. The House of Commons is no exception. All bills now go automatically to one of its regular committees unless the House votes otherwise in particular cases. These committees are of various types. First, there are the *standing* committees on public bills, as they are called—committees which are appointed at the opening of a session and remain unchanged until parliament is prorogued. To these standing committees, of which there are now four in number, certain classes of public bills are referred; each committee receiving the measures which the speaker assigns to it in accordance with the established rules. Second, there are *select* committees on public bills appointed to consider and report upon individual measures or questions which involve some new principle, or upon some subject which has not yet come before the House in the form of a bill. They gather information, examine witnesses, and so on. When their work is done they make a report and go out of existence. Third, there are some *sessional* committees, appointed for a single session to deal with certain designated matters such as the examination of petitions. Fourth, and highly important, are the *committees on private bills*, of which more will be said later.¹⁷

Committee of the whole House. Finally, there is the Committee of the Whole House. In other words, the entire House sits as a committee; the speaker leaves the chair and his place is taken by a chairman who is appointed afresh in each new parliament and is a staunch party man; the mace is placed under the table as a sign that the House, as a House, has adjourned.¹⁸ When the House resolves itself into a Committee of the Whole its rules of procedure are relaxed; a member may speak several times on the same question if he desires; motions do not need a seconder; discussion cannot be terminated by a

¹⁵ None of these, of course, constitutes a world record. Pliny once spoke in the Roman Senate for seven hours. Several "filibustering" speeches in Congress have been longer than Pliny's.

¹⁶ The debates were originally published by a printer named Hansard as a private venture. They are now issued as an official publication under the control of the House.

¹⁷ Pp. 186-188.

¹⁸ The chairman does not sit on the speaker's dais, but at the clerk's table.

motion "that the previous question be now put"; and any matter which is voted upon can easily be opened for reconsideration. When the Committee of the Whole House has finished with its consideration of a measure, item by item, a motion is made that the committee "rise and report."¹⁹ The speaker then resumes the chair and the chairman reports the committee's action; in other words, the House reports to itself and then proceeds to adopt its own recommendations.

How committees are chosen in America. In American legislative bodies, with the exception of the two Houses of Congress, all committees (apart from the Committee of the Whole) are ordinarily appointed by the presiding officer. This is true of most state legislatures, city councils, and indeed of unofficial organizations. In the House of Representatives at Washington the appointing of committees was for a long time in the hands of the speaker, and this prerogative made him the virtual master of business. During the years 1910-1911, however, the rules of the House of Representatives were changed and the power of appointing committees was taken from the speaker. Committees in both branches of Congress are now appointed, in a roundabout way, by the Senate and the House themselves.²⁰ In the House of Commons the speaker has never had, at any time, the function of appointing committees. To give him this power would be to make his office the very negation of what it is supposed to be, namely, a sanctum of neutrality amid the warring factions of partisanship.

How committees are chosen in England. Committees in the House of Commons (with the exception of the Committee of the Whole House) are chosen by a committee of selection.²¹ This committee of selection, which contains eleven members, is named by the House itself at the beginning of each parliamentary session. But while ostensibly named by the House itself, the membership of the committee of selection is arranged in advance by a conference between the prime minister and the leader of the Opposition. In making up the various committees, this committee of selection does not pay strict attention to party lines, although members of the different parties are selected in something like the proportion that they have in the House as a whole. Nor does it give undue attention to seniority as is the case at Washington. Each standing committee ordinarily contains twenty members, but the orders of the

¹⁹ When the House of Commons is discussing revenue measures the Committee of the Whole House is called the Committee of Ways and Means; when it is considering appropriations or expenditures it is called the Committee of Supply. Colloquially, the members speak of "the House in Ways and Means" or "the House in Supply."

²⁰ See W. B. Munro, *Government of the United States* (5th edition, New York, 1946), pp. 279-280, 329-334.

²¹ Nowadays, however, the names of the persons who are to constitute a new select or sessional committee are usually included in the motion which proposes such a committee's appointment.

House provide that supernumerary members may be added to serve during the consideration of any designated measure; the design being to strengthen the committee when some matters requiring special knowledge are coming before it.²² Select committees are much smaller; they usually have eleven members, while the committees on private bills have four members only. Each committee in the House of Commons has a chairman, but this official is neither named by the committee of selection, as is the practice in Congress, nor chosen by the committee itself. Instead, the speaker names a panel of chairmen and from this panel a chairman for each standing committee is chosen.²³

The cabinet as the chief committee of parliament. The cabinet is not officially ranked as a committee of the House of Commons, yet it is in fact the greatest parliamentary committee of them all. It is the steering committee. It is the originator and the censor of all important business. Nothing of any general importance has much chance of getting through the House of Commons unless the ministry favors it or at least refrains from opposing it; on the other hand a measure has every chance of passing if the cabinet lends its support. There are exceptions to this general rule, of course, and these exceptions are naturally more frequent when a ministry is in office without having a solid majority of its own party behind it—as has happened more than once during the past forty years. But when a ministry controls a clear majority, as it usually does, there is no gainsaying its mastery of the legislative program.

Its relation to the regular committees. Nevertheless the cabinet's control of committees is by no means so strong as its control of the House. Party discipline is not so strict in the one as in the other. Hence it frequently happens that a standing committee amends a bill in a way which the ministers do not like. The minister in charge of the bill must then decide (usually in consultation with his colleagues) whether he will accept the amendment or ask the House to strike it out when the committee reports the bill. This the House will do if the ministry insists, but coercive tactics are not popular in England and the ministers often find it wise to concede or to compromise. In any event the minister in charge of a government measure must familiarize himself with every detail of it, must watch its course day by day in committee, and must guide it through the House. It is for this reason that the ministers are the real leaders of the Commons and collectively form "the great standing committee of parliament."

Congestion of business and the proposed remedy. The House of Commons has too much to do. Its members cannot, and do not, familiarize

²² For the most part the speaker assigns bills to these committees without regard to their subject matter, which is quite different from the practice in American legislatures.

²³ In the case of the committees on private bills, however, the chairman is designated by the committee of selection.

themselves with even a small portion of the legislation (including private bills) which they enact. Instead of controlling the policy of the government, the majority merely acclaims it, while the minority criticizes it; in neither case is there always a clear understanding of what the policy is. The state legislatures in the United States take much of the legislative burden off Congress, but there are no state legislatures in England. As a remedy for the congestion of business in parliament it has been suggested that regional governments should be established and some of the work devolved upon them. Scotland and Wales would each be given their own regional legislatures, with a certain sphere of legislative authority assigned to them. Northern Ireland is already equipped in this way. England would be divided into provinces and dealt with similarly. The idea of regional devolution has been much discussed but nothing has yet come of it.²⁴

ANALOGIES AND CONTRASTS

The House of Commons and the House of Representatives compared in general atmosphere. Between the House of Representatives and the House of Commons there are many analogies and contrasts. Although one is child of the other, and bears unmistakably the marks of its parentage, the difference in environment has not been without its effect upon both structure and temperament. The House of Commons is the larger body, but it makes a much poorer showing in point of consistent attendance. It is a less animated body, with less noise and bustle and racket on its floor. Looking down from the visitors' gallery in the old chamber one would see a sprinkling of members lolling about on the benches, some chatting with their neighbors, a few paying perfunctory attention to what is going on, and still fewer wholeheartedly interested in the proceedings. The atmosphere of the Commons has been traditionally one of nonchalance and leisure. The House of Representatives, on the other hand, seems to a visitor in the gallery to be rushing its business at breakneck speed, with a fairly good attendance of members, all of them busy, earnest, scurrying in and out, and with several Congressmen seemingly desiring to speak at once. The atmosphere at the Capitol has no aroma of leisure. It can all be summed up in the saying that one body is English while the other is American.

The two speakers. In America the speaker of the House is always a party man, chosen by a caucus of the majority members. When he takes the chair he does not discard his party allegiance. On the contrary, he sometimes becomes

²⁴ The subject is discussed at length by W. H. Chiao in his *Devolution in Great Britain* (New York, 1926). Alternative methods of improving the work of the House (by reducing the size of committees, and so on) are put forward in W. Ivor Jennings, *Parliamentary Reform* (London, 1934).

a more aggressive partisan than he was before. The standing committees of the House of Representatives are more numerous than those of the House of Commons and (with one exception) are smaller in membership. In Congress the chairman of each committee is designated when the committee is formed and the chairmanship almost always goes to the senior majority member; that is, to the member from the dominant party who has served longest on the committee.²⁵ In the House of Commons seniority of service also counts in the sense that a young or inexperienced member is not made chairman of an important standing committee, but among older and more experienced committeemen no stress is laid on relative length of service. Personal ability and the capacity to preside are what count at Westminster when chairmanships are being allotted.

Classification of bills. Another difference is that at Washington all measures, including money bills, go to a standing committee before being taken up by the House of Representatives in Committee of the Whole, whereas in England, money bills go to this latter committee directly. Congress makes no distinction, moreover, between public and private bills in the English sense. Whether bills are general or special in their scope they all go to the regular committees. Most of the bills which go to committees in the House of Representatives never come back again; they die and are buried in the committee's files. In the House of Commons, on the other hand, every committee must return all the bills assigned to it for consideration. Again, the dominant party in the House of Representatives always obtains a majority on every important committee, a majority which is usually sufficient to ensure its control of the committee's action. In the House of Commons this is not necessarily the case. The standing committees are made up in a manner favorable to the majority party in the House, but the committees on private bills are constituted without any reference to party affiliations.

Leadership. Finally, the most important of all contrasts is to be found in the fact that the "cabinet" of the United States has no direct connection with the process of lawmaking. It is not a steering committee of Congress, and Congress would resent its assumption of any such role. By virtue of the ministerial system the House of Commons is provided with a strong group of executive leaders who guide and virtually dominate its work. In the older textbooks on English government it is commonly stated that "the House of Commons controls the cabinet." Fundamentally that is true, for the House can dismiss the cabinet from office at any time. But it is equally true that "the cabinet controls the House." Business is done because the cabinet leads and the House follows. It may refuse to follow, to be sure, but the fact remains that it rarely

²⁵ The next member in order of seniority is known in congressional parlance as the "ranking member."

does so under any circumstances and practically never when the cabinet system is functioning as the theory of English government expects it to function. But the House of Representatives feels itself at liberty to bolt executive leadership at any time and on any question. In no sense does the cabinet control the House at Washington.

Annual sessions. The House of Commons must be summoned into session at least once a year or, to put it more accurately, there must not be more than a twelve-month interval between the close of one session and the beginning of another.²⁶ A session usually lasts from five to seven months. The House is ordinarily called together early in November. It adjourns from just before Christmas until late in January. Then it resumes and continues to sit until June or July, or perhaps a little later, with brief adjournments over weekends and holidays. Each House may adjourn without reference to the other, which is not the rule at Washington. The president of the United States can adjourn Congress, in case the two Houses fail to agree on adjournment; the crown in England cannot adjourn either House. But when the cabinet decides that it is time to bring a parliamentary session to a close, it so informs the king, and parliament is accordingly "prorogued." Both Lords and Commons are prorogued together. Prorogation terminates all pending business; hence a measure which has not been finally passed by both Houses at the date of prorogation must be introduced anew at the next session and must go through all its stages over again in order to become a law. When parliament has run its legal course of five years, or when the cabinet at an earlier date desires a general election, the crown "dissolves" the House and summons a new parliament. As has been already explained, however, parliament may lengthen its five-year term in an emergency. The terms "adjournment," "prorogation," and "dissolution" refer, therefore, to the end of a sitting, the end of a session, and the end of a parliament.

In summoning parliament both the Lords and Commons are invariably called to meet at the same time. In the United States the Senate may be called into session, and sometimes has been so called, without the House of Representatives. This is because its action alone is sufficient to confirm presidential appointments or to ratify treaties. The British House of Lords has no powers of this character and there is accordingly no reason why it should meet when the Commons is not in session. Even for impeachments, the initiative of the latter is essential.

The organization of the House of Commons is a theme which has been dealt with in many books. Short descriptions may be found in Sir John A. R. Marriott,

²⁶ Many important acts, including appropriations, require annual passage. If parliament failed to meet for more than a year the whole business of government would be seriously affected.

Mechanism of the Modern State (2 vols., Oxford, 1927), Vol. I, pp. 509-532; Sir William R. Anson, *Law and Custom of the Constitution* (5th edition, Oxford, 1922), Vol. I, pp. 253-321; J. A. Thomas, *The House of Commons, 1832-1901; A Study of Its Economic and Functional Character* (New York, 1940); and Frederic A. Ogg, *English Government and Politics* (2nd edition, New York, 1936); pp. 363-394.

More elaborately the topic is discussed in Herman Finer, *Theory and Practice of Modern Government* (2 vols., New York, 1932), pp. 780-877; G.F.M. Campion, *An Introduction to the Procedure of the House of Commons* (2nd edition, New York, 1947); Sir Thomas Erskine May, *Parliamentary Practice* (14th edition edited by Campion, London, 1945); Josef Redlich, *The Procedure of the House of Commons* (3 vols., London, 1908); Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921); H. Graham, *The Mother of Parliaments* (Boston, 1911); Sir Henry Lucy, *Lords and Commons* (London, 1921); Robert Luce, *Legislative Procedure* (Boston, 1922), *passim*; A. I. Dasent, *The Speakers of the House of Commons* (New York, 1911); W. J. Brown, *Guide to Parliament* (London, 1946); S. Gordon, *Our Parliament* (London, 1945); Quentin Hogg, *The Purpose of Parliament* (London, 1947); T. G. B. Cocks, *The Parliament at Westminster* (London, 1948); S. Gordon, *The British Parliament* (new edition, New York, 1952); and J. C. Trewin and E. M. King, *Printer to the House: The Story of Hansard* (London, 1952).

The *Standing Orders of the House of Commons* (revised and republished every few years) should of course be consulted, as should the three reports of the Select Committee on Procedure (9-1, 1945; 58-1, 1946; 189-1, 1946).

CHAPTER XII

The Process of Lawmaking in Parliament

The House of Commons is a very clumsy machine, but it works, and on the whole it turns out a good deal of work. It would be a better machine if men were a little less vain and more given to silence—John Bright

The genesis of legislative procedure. In the early stages of its history the House of Commons took no part in the formal enactment of laws. It merely petitioned the crown to make laws. Laws based upon the petitions of the House were then framed and enacted, at its own discretion, by the crown in council. But these laws were sometimes not in accord with the spirit of the petitions, and there were frequent protests from the commoners on that account. Eventually, in 1414, the king agreed "that from henceforth nothing be enacted to the petition of the Commons contrary to their asking." And soon thereafter the House of Commons adopted the plan of presenting its petitions in the form of bills, all ready to be enacted. With this step came the need for a system of parliamentary procedure, and in due course there developed the practice of giving each measure three readings, referring it to a committee, and holding debates on it when differences of opinion arose.

From simple to complex. The procedure was very simple at first; but year after year new complications were added by action of the House or developed by usage. All systems of legislative procedure tend to become more complicated as they grow older. The existing process of lawmaking in the House of Commons is the outcome of a growth and development which covers about 500 years, and legislative procedure in many other countries has been to a large extent modeled upon it. The manual which Thomas Jefferson prepared while he was serving as vice president (and presiding over the United States Senate) was in all essentials based upon the English parliamentary procedure of his day. The American House of Representatives in 1837 adopted a provision, which is still in force, that Jefferson's manual should govern its procedure in matters not covered by its own rules. Thus it has come

to pass that the rules of procedure in Congress today owe their fundamentals to the older practice of the British House.

English and American procedure is substantially akin. To the casual onlooker the methods of lawmaking at Westminster and at Washington seem to be wholly unlike. But the differences, save in one important respect, are superficial only. They do not affect the underlying principles, which (with one exception) are the same in all English-speaking legislative chambers. Measures are introduced on both sides of the Atlantic in much the same way; they are given three readings, referred to committees, reported out, debated, amended, and sent to the other chamber. The differences relate principally to the position and powers of the speaker, the organization and work of the committees, the limitations on debate, and the distinction between public and private bills.

But there is one very important difference: the distinction between public and private bills. This last-named difference is the most important one. In parliament a distinction has long been made, and is still made, between public and private bills; in Congress there is no distinction except that the two classes of bills are placed on different calendars. According to British parliamentary practice a *public* bill is one which affects the general interest and ostensibly concerns the whole people or, at any rate, a large portion of them. A measure for changing the tax laws is a public bill; so is a bill for altering the suffrage, or raising the age of compulsory school attendance, or establishing a new administrative department. A *private* bill, on the other hand, is one which relates to the interest of some one locality or corporation, municipality, or other "particular person or body of persons."

Thus a bill authorizing the construction of a new urban subway, or the extension of an old one, or permitting a city to borrow money to enlarge its municipal lighting plant, or empowering a corporation to do something not already authorized by its charter—anything of that sort is a private bill. There are some bills, of course, which come in the twilight zone between these two categories, but so many measures have been presented to parliament and ruled upon during its long history that the precedents now cover almost every conceivable case, and the speaker merely follows these precedents in deciding, when doubt arises, whether a bill belongs in the public or the private class.

Government bills and private members' bills. When public bills are brought in by a member of the ministry they are known as government measures. All money bills must be so introduced.¹ But public bills (other than

¹ No money bill can be introduced unless a previous resolution of the House in Committee of Ways and Means has been passed declaring the expediency of incurring certain expenditures or of imposing certain taxes. No such resolution can be moved except by a minister of the crown. The same is true of every bill which, though not in form a money bill, involves in fact a charge on the public funds.

those which relate to the raising and spending of money) may also be brought in by any private member; that is, by a member of the House who is not a member of the ministry. Such public bills are known as *private members' bills* and a word of caution should be added lest the reader drop into the pitfall of confusing these "private members' bills" with "private bills." Government bills, money bills, and private members' bills are all *public bills*. In the process of legislation they are so dealt with. Private bills, on the other hand, are based on petitions from the parties directly interested and go through a special procedure. Any bill, whether public or private, may be introduced either in the House of Commons or the House of Lords; the only exceptions being that money bills must originate in the Commons and judicial bills in the House of Lords. As a matter of practice, however, the great majority of all public bills originate in the Commons, although bills of a noncontroversial nature are now usually originated in the Lords.

How public bills are prepared. Most of the important measures laid before parliament are government bills, which means that much preliminary consideration is given to them by the cabinet. Important government bills are worked out in considerable detail before they go to parliament at all. The usual procedure is as follows: one of the ministers makes the first rough outline of a bill, stating only the main principles. This outline he lays before the cabinet for discussion. If the principles are agreed to, he then hands his outline to his own expert subordinates for elaboration into a finished measure, with sections, subsections, and paragraphs. Thereupon the cabinet gives it a final look-over and the bill is ready to be introduced.

Introduction and first reading. The introduction of every bill, whether by the government or by a private member, is preceded by a formal notice. Then, when the time comes, the bill is handed to the clerk of the House, who reads its title aloud. In some cases the bill has not been put into finished form when the time for its introduction arrives. When that happens the clerk is given a dummy bill with nothing but the title written down. In any event the House, without debate or discussion, accepts this "first reading," and orders the bill to be printed as soon as it is ready, thus placing it in line for a "second reading." The measure must then wait its turn. If it is a government bill of great importance, however, the minister in charge of it usually gives the House a brief summary of its provisions when it is introduced.²

The second reading and reference to committees. In due course the bill is again reached by the House, and its sponsor moves that it be "read a second time." This second reading gives opportunity for a debate on the

² It sometimes happens, moreover, that the minister in charge of an important bill will "ask leave to introduce it." This provides him with an opportunity to make an extended speech on the measure and may bring about a general debate.

principles of the bill. Discussions of individual provisions are out of order, and amendments which merely aim to alter the phraseology of the bill are not considered at this stage. The question is whether the House desires legislation of the proposed type at all. If the opposition desires to test its strength with the ministry, here is the opportunity to do it. It may move "that the bill be given its second reading this day six months," or (in the latter part of the session) "this day three months" which would put it over to a date when the House is not in session, and hence is equivalent to an indefinite postponement. Or it may offer some resolution which is hostile to the general tenor of the bill. Long debates often mark this stage in the progress of important measures—debates which extend over several days. Such debates are often followed by a vote (a "division," it is called in England) which determines whether the House approves or disapproves the principles of the bill. In the case of a government measure a defeat at this stage expresses a lack of confidence in the ministry and under normal conditions would compel it to resign. Only on rare occasions, however, has a government measure been refused a second reading.

The committee stage. Having passed its second reading the bill enters the *committee stage*. It is referred to a committee for the consideration of its detailed provisions. Ordinarily every public bill (except a money bill) goes to one of the standing committees; but in exceptional cases the House may order it to a select committee.³ If the measure is a money bill, it goes to the committee of the Whole House immediately after its second reading. Moreover, the House may at any time and for any reason order a nonfinancial measure referred to the Committee of the Whole House, but this is seldom done.

The report stage. The organization of these various committees has already been explained.⁴ Every measure sooner or later reaches the House from a standing committee, a select committee, or from the Committee of the Whole House. Then it enters the *report stage*, being laid before the House in amended and reprinted form. Bills may come back from committees and be given their third reading forthwith, but important measures rarely have any such good fortune. If amendments have been made in committee, these may be debated during the report stage, and alternative amendments offered. All the old questions which were threshed out at the second reading may be debated over again—and in the case of a controversial measure they sometimes are.

The third reading. At the close of this debate the measure is ready for

³ The reference of a public bill to a select committee is usually for the purpose of examining some new principle which has been embodied in the bill.

⁴ Above, pp. 175-176.

its third reading. In connection with the third reading of a bill no amendments other than purely verbal ones are in order. If it is desired to change the substance of a clause, even slightly, the bill must go back to committee. The House must now accept or reject the bill as it stands. Rejections at the third reading are not common. Here ends the action of the Commons and the bill goes to the House of Lords for concurrence.

Procedure in the House of Lords. There all public bills are given their first two readings, considered in Committee of the Whole, referred to a standing committee, reported back with or without amendments, debated, and then adopted or rejected. Under the normal procedure no measure (except a money bill) can be passed unless every word of it has been approved by both Houses. Under the terms of the Parliament Act (1911) a money bill becomes a law one month after its passage by the Commons even if the Lords withhold their concurrence.

Disagreements. On other measures, if the two chambers fail to agree, there are two alternatives. An exchange of written messages may take place between committees representing the two Houses in the effort to effect a compromise, and an agreement may be achieved in this way. There is no provision for a joint committee of conference as in Congress. Under the 1911 Act a deadlock between the two Houses could last until the Commons passed the controversial measure at three successive sessions with an interval of at least two years between the first and third passage. This method was used to pass the Parliament Act, 1947, which went into effect in December, 1949, and which still further weakens the Lords' suspensory veto by requiring only a single repassage by the Commons and reducing to one year the time needed for legislation without the Lords' assent.

The theory of British parliamentary procedure: private members' bills. British parliamentary procedure is based upon the theory that the initiative, as respects all public measures, belongs to the cabinet and that government measures ought to have the right of way. Hence, although public bills may be introduced by private members, they have relatively little chance of passage or even of prolonged discussion. This is because most of the daily sittings of the House are reserved for government measures and only a few are available for the consideration of private members' bills. Even these sittings, moreover, are taken over by the ministry for government bills when the pressure of business becomes heavy.⁵ Nevertheless, private members sponsor many public bills, and as there is no chance of considering them all, the rules of the House provide that a selection from the entire grist shall be made

⁵ In 1945 the Labor government virtually abolished private members' bills by allowing no time at all for their consideration. Later some time was again assigned for this purpose.

by lot. At an appointed hour, therefore, those private members who desire to introduce public bills are required to put their cards in a box at the clerk's table, and the clerk draws them out one by one. The member whose name is first drawn gets the opportunity to introduce his bill on the first available day of the session; the second member gets the next available day, and so on till the opportunities are exhausted.

They have little chance of enactment. Having had the good fortune to get his bill on the notice paper in this way, the private member moves that it be read a first time and secures it a second reading; it then goes to one of the standing committees, and follows the same procedure as other public bills. "If a member is lucky in this lottery and can introduce a bill which is generally popular, and which neither the ministers nor any of his fellow members dislike, and if he possesses the art of appeasing opposition, he may manage adroitly to steer his bill through a parliamentary session."⁶ But few members can hope to run this gauntlet successfully, and although scores of private members' bills are prepared on the eve of each session it is unusual for more than a half dozen of them to gain places on the statute book before parliament is prolonged or dissolved.⁷

PRIVATE BILLS

1. Private bill procedure. So much for public bills, whether introduced by the ministry or by private members. All other bills are known as private bills. Many private bills are bills introduced by municipalities asking for special powers. English municipalities have a broad range of powers laid down by general law, but from time to time they desire special powers in addition. These powers they seek, in many instances, by means of private bills. Every year parliament gives special powers to individual cities (boroughs) in this way. A highly advantageous arrangement this is deemed to be, for it gives flexibility to the system of local government and enables parliament to grant one municipality additional powers as an experiment without committing itself to the same policy for all.

The essential preliminaries. These private bills are presented to parliament in a different way and do not follow the same procedure as public bills. They are presented in the form of petitions with the bills attached. They cannot be introduced by merely giving notice on the order paper but must first

⁶ C. F. G. Masterman, *How England is Governed* (New York, 1922), p. 248.

⁷ How difficult may be the passage of these measures is exemplified by the fate of the Censorship of Plays (Repeal) Bill which was submitted in 1949. It had a considerable majority on its second reading and got through the committee stage only to fail of final passage because all the time assigned for the discussion of private members' bills had been exhausted before it could be brought up. A member inquired of the speaker whether or not a little time could not be found on some day when government business was finished before the usual time for adjournment. The answer was that, if the ministry was not interested, nothing could be done.

go before two parliamentary officials (one from each House) known as the examiners of petitions for private bills. Every petition for a private bill must be preceded by certain published notices, the object of which is to inform those whose private interests may be affected by the bill. Copies must also be sent in advance to the government departments concerned—to the ministry of health in the case of a private bill providing for the extension of a municipal sewerage system, for example, or to the ministry of transport in the case of a bill authorizing the taking of land for a street railway. If the examiners find that there has been full compliance with the requirements, they so certify, and the bill may then be presented in either House.

The special committees on private bills. On introduction, a private bill is read a first time and ordered to be read a second time. After second reading, if there is no opposition, it is customarily referred to a committee on unopposed bills. If there is opposition it goes to one of the private bills committees. These are small committees of disinterested members, who are appointed by the committee of selection from lists prepared by the party whips. Each committee on private bills consists of four members in the Commons. In the House of Lords each private bills committee has five members. The chairman has a casting vote and three members form a quorum. A private bills committee may be named to consider a single bill, but more often every such committee gets a group of similar measures. Before going on a private bills committee, however, each member must sign a declaration that he has no personal interest, and that his constituents have no local interest, in the measures to be considered.

Hearings on private bills. The private bills committees, each in its own committee room, give hearings to all who have a definite interest in the bills, whether for or against. Every private bill begins with a preamble setting forth the object of the bill. The committee first hears evidence and arguments on the question whether the object is desirable. Then it decides that the preamble is proved or not proved. If the latter, the bill is dropped; if the former, the committee proceeds with hearings on the clauses of the bill. These hearings are fair and impartial; they are conducted by paid counsel on both sides, with testimony as in a court of law and arguments at the close. They differ from the legislative committee hearing with which Americans are familiar in that none but persons who have a *locus standi*, in other words a demonstrable interest in the bill, are permitted to give testimony before the committee.

Advice from the executive departments. The private bills committee, in examining any bill, has at its disposal a report from the ministry of health, the ministry of fuel and power, the ministry of transport, or the other

central department which is most immediately concerned. In this way it can make sure that the measure does not conflict with the general policy of the government or create an undesirable precedent. But it cannot be too strongly emphasized that the work of a private bills committee, while legislative in form, is largely adjudicatory in fact; hence it is done in accordance with a procedure which is quasi-judicial. Party politics have little or no place in the consideration of private bills.

The action of the House. When a private bills committee has reached its decision it reports each measure, favorably or unfavorably, with or without amendments, to the House which its members represent. The committee's report on the bill is almost invariably accepted, although there is no question as to the right of either House to reject a report on a private bill if it chooses to do so. But the members know that the committee has been impartially constituted, that it has given both sides a fair hearing, and that it has consulted the experts. Occasionally, however, a private bill raises some issue of general policy, reaching far beyond the question immediately covered, and then the House may divide on the committee's report. But when it accepts the committee's recommendation, the private bill then takes the same course as a public bill.

Merits of the plan. This method of dealing with private bills has two outstanding merits. It ensures the careful, nonpartisan consideration of measures which, from their nature, ought not to be dealt with in a partisan spirit. It saves the time of both chambers. The procedure rests upon the common-sense principle that the time and patience of several hundred legislators should not be consumed, hour after hour, in discussing whether the borough of Battersea should be permitted to acquire a new cemetery or the Liverpool Corporation Tramways build 200 yards of trackage outside the city limits. In Congress, where general and special bills are dealt with by the same procedure, there is a serious imposition upon the time and patience of the members. Measures which are in effect private bills come before it by the thousands. They are brought in by individual Congressmen. One proposes a pension for somebody, another a veterans' hospital somewhere, another an official favor for somebody else. All bills in Congress are supposed to be created free and equal; no matter how trivial their importance may be, they are all referred to some committee which may already have its calendar crowded with measures of nation-wide interest. The result is that most of the special bills obtain very little consideration, and unless some influential members of Congress get behind them they are asphyxiated in committee. Most of them probably deserve this fate, but unhappily it is not always the meritorious ones that survive. The worthiness of a special bill in Congress has little to do with its getting a

favorable committee report. The main thing is the amount of pressure that the Congressman who fathered it can bring to bear.

Defects of the British private bill procedure. On the other hand, the English system of private bills procedure has the defect of being expensive. Witnesses must be brought to London, sometimes many of them. Fees are charged for the introduction of a private bill and again at various stages in its progress through parliament. It also becomes necessary, when the bill is opposed, to employ parliamentary agents who exact substantial remuneration. These parliamentary agents are professional law promoters; they are specialists in their work, and almost without exception they are lawyers of high standing.⁸ But any person may become a parliamentary agent by registering as such and filing a bond. London has lots of them, and the best ones charge high fees for their services. They are not lobbyists in the American sense; their business is not to roam the corridors buttonholing members. They merely supervise the drafting of a private bill, see that the required notices are given, present the evidence to the committees, and make arguments.

The system of "orders"; provisional orders. The quest for private acts of parliament has been considerably slackened by the use of "orders." These orders are issued by a central department and become effective either automatically or when confirmed by parliament.⁹ In the latter case they are known as "provisional orders." The reason for the issuance of these orders is that many general laws which have been passed by parliament (such as the Public Health Acts and the various acts relating to street railways, public lighting, poor relief, civil aviation, pensions, labor, and education), authorize the various government departments, such as the ministry of health, the ministry of transport, the ministry of food, the ministry of civil aviation, or some other ministry, to issue certain orders whenever proper cause for such action can be shown. When, therefore, a power not already conferred by law is desired by some municipality, corporation, or individual, an application can be made to whichever central department has jurisdiction in the matter.

⁸ There are two grades of lawyers in England—solicitors and barristers. The solicitor deals directly with the client; the barrister (when one is employed) is retained by the solicitor to appear in court, except in the minor courts where the solicitor may himself appear. In the case of private bills a solicitor prepares the case and may present it before the committee except in certain cases where the presentation of the case must be handled by a barrister.

⁹ There are, in all, no fewer than six classes of orders, viz.: (1) orders made by a central department which become effective when made and do not require any reference to parliament; (2) orders which become effective when made but have to be laid before parliament; (3) orders which have to be laid before both Houses for forty days before they become effective, during which time, of course, they may be objected to in either House; (4) orders which do not become effective unless confirmed by resolution of both Houses; (5) orders which may become effective unless some authorized outside body objects, in which case they become provisional orders; and, finally, (6) orders which are provisional in every case, objection or no objection, and do not become effective until they have been embodied in a Provisional Orders Confirmation Act and passed by parliament.

How it operates. The department, through its administrative officers, thereupon inquires into the merits of the application, and if it decides that the permission ought to be granted, an order is issued conferring the desired power. This order, as has been said, may be a provisional order, in which case it requires for its validity the subsequent ratification of parliament. The usual practice is to lump several provisional orders into a confirmation bill, and in that form they are presented for enactment into law. Confirmation is virtually never refused. It is less expensive to obtain authority in this way than by introducing a private bill, hence the practice of applying for "orders" has been increasingly popular in recent years.¹⁰

British and American procedure compared. With this general explanation of the various steps through which a bill passes on its way through the House of Commons—five steps in all¹¹—it is now possible to compare the essential features of English and American legislative procedure. Fundamentally they are alike, although there are some differences between the two.

The absence of provision for formal executive leadership in America. In Congress, as has been said, there is no broad distinction among bills. All of them are public bills introduced by private members. It is true, of course, that some measures are inspired by the President or by members of his cabinet. Many notable illustrations of this were afforded during President Franklin Roosevelt's administration—for example, the National Recovery Act, the Agricultural Adjustment Act, the National Labor Relations Act, the Securities and Exchange Act, the Social Security Act, and so on.¹² But measures are never formally laid before Congress by a member of the President's cabinet or in the name of his administration. To introduce measures in this way as a regular procedure would be out of keeping with the traditions of Congress and would probably be resented by the members.

Its importance in Britain. It is not so in the House of Commons, for there the members of the majority party are faced with the simple fact that a vote against any government measure is a vote to turn their own ministers out of power and put their opponents in. This makes them far more amenable to the crack of the party whip. The American Congressman, when he votes against some measure which the administration is known to support, realizes full well that nothing catastrophic will happen. His party will not go out of power, if it is in power; it would continue in office to the end of its prescribed term, even though it were turned down by the House of Representatives on one measure after another. The congressional rebuff of President F. D. Roosevelt's proposal

¹⁰ In addition to the granting of orders the various central departments give authorizations dealing with matters of routine in a less formal way.

¹¹ To wit: introduction and first reading, second reading, committee consideration, report stage, and third reading.

¹² The first two of these were later held to be unconstitutional.

to reorganize the Supreme Court, if it had taken place in parliament, would have turned the existing government out of office.

2. Introduction of public measures. Any member in either chamber of Congress may introduce any bill, save that money bills must originate in the House of Representatives. But measures of comprehensive scope and great importance, including those which correspond to government measures in Great Britain, are usually laid before Congress by the chairman of the committee to which such bills would naturally be referred, and hence often become designated by the chairman's name. That is why we speak of the Sherman Law, the Mann Act, the Rogers Act, the Cable Act, the Norris-La Guardia Act, the Wagner Labor Act, the Taft-Hartley Act, and so forth.¹³ A measure for the further regulation of the railroads would ordinarily be brought in by the chairman of the committee on interstate commerce, while a proposal to provide federal subsidies for education would be introduced by the chairman of the committee on labor and education. In a limited sense, therefore, the chairmen of committees in Congress assume the functions of initiative and guidance which members of the ministry are accustomed to exercise in parliament. Although they are not heads of administrative departments they are usually in close touch with the departments concerned, and are provided with all the data they may require. Expert draftsmen are also used by Congress in the preparation of measures, although not to the same extent as in England.

3. A difference in committee work. In Congress, again, all bills are referred to committees before there is any discussion of their principles or general merits. In one respect this is an advantage, in another a defect. It gives the committees more freedom in overhauling a bill and changing its substance. On the other hand, it means that a committee must do its work without having first ascertained the attitude of the House toward the measure as a whole. Hence it sometimes happens that congressional committeemen will spend several weeks in perfecting the details of a bill which is then rejected by the whole House on general principles or because of a fear that it would be politically unpopular. The excellence of the work done by the English parliamentary committees is due, in part at least, to a feeling of reasonable certainty that their labor will not be in vain. For they never work on the details of any public bill until after the House of Commons has accepted it in principle.

4. Chairmen of committees in the two countries compared. The chairmen of committees in the House of Commons, on the other hand, do not obtain the prominence or the publicity that is given to the chairmen of important committees at Washington. Nor do they figure so prominently in the

¹³ Sometimes, as in the last-named example, the names of the two sponsors are joined, one from the Senate and the other from the House.

debates. On the floor of the House they are quite overshadowed by the ministers who take personal charge of government measures. Their names are not tacked to bills and displayed in the newspaper headlines. There is still another difference: the chairman of a parliamentary committee (like the speaker of the House) is deemed to be impartial. He presides, and maintains decorum in his committee room, but he does not take sides. The chairman of a congressional committee has no such inhibition. He is a power in his committee and often dominates it. He has no hesitation in working openly in behalf of a measure which his committee is considering, or in working openly against it. Finally, there is a lively competition for places on the more important committees at Washington; at Westminster there is very little.

5. The system of questioning ministers. The use of the "question hour" in the House of Commons points to still another important procedural difference. When a Congressman desires information from one of the executive departments in Washington he telephones or writes for it, and if he does not obtain it in that way he may offer a resolution requesting that it be brought in. But he is not allowed to consume the time of the whole House in pelting questions at the administration. The administration in Washington cannot be questioned on the floor, for nobody officially represents it there. Some chairman of a committee or some other Congressman may constitute a spokesman for the president and may rise in his defense when an attack is made; but he does so in an unofficial capacity. In parliament, as has been pointed out, there is a regular time for asking questions and for answering them from the floor.

6. Yielding the floor. There are two practices in the American House of Representatives which the House of Commons has thus far avoided. One is the custom of requesting a member to yield the floor when he is in the middle of his speech. This is done at almost every sitting in Washington, and although the member who has the floor may decline to yield it he usually complies as a matter of courtesy. In this way the debate is sometimes turned into a personal fracas. The custom of yielding the floor is unknown in the House of Commons. In that body, when a member is on his feet he may be interrupted at times by cries of "Hear, hear" or "No, no" from the opposing benches, but other members do not cut in upon him until he is through. The continuity of the debate is in this way preserved.

7. Granting leave to print. Then there is the "leave-to-print" concession. It has no place among the usages of parliament. The only way in which a member of the House of Commons can have a speech printed at the public expense is to deliver it. But in Congress many undelivered speeches are printed, session after session. A Congressman speaks for five or ten minutes and then moves

that he be given leave to "extend his remarks" in print. Nobody objects, as a rule, for as a choice of evils it is preferable to let him print his speech rather than have to listen to it. In some cases a Congressman obtains leave to print, in the *Congressional Record*, a speech no portion of which has been delivered at all. Copies are then struck off by the thousands and franked through the mails to voters in the Congressman's district—to show them what an accomplished orator their representative is. The English voter has been spared this affliction.

Party responsibility as a feature in the two countries. Much has been written about the concentration of party responsibility in England and the fidelity with which party pledges are redeemed. A British political party, when it makes a promise to the people, is enabled by the organization and procedure of parliament to fulfill this promise. If it triumphs at the polls, it controls both the executive and legislative branches of government. The cabinet then proceeds to crystallize the party's promises into government measures, as the Labor government did during the years 1945-1950. But in America the organization and procedure of the government does not so readily lend itself to the redemption of party pledges. Candidates for the presidency make all sorts of promises, express and implied, during the election campaign. But without the cooperation of Congress there is no way in which these promises can be carried out. Senators and Representatives also make pledges, but unless the administration is ready to help in fulfilling them they go mostly unredeemed. The same is true in state government.

The redemption of party pledges. Party programs are, therefore, a much less accurate forecast of future legislation in America than in England. Party pledges are more frequently disregarded here than there. English parliamentary procedure is based upon the principle that the dominant political party, through its majority in the House of Commons and under the leadership of the ministry, is definitely responsible for the fulfillment of its program. No checks and balances stand in its way. It cannot avoid or evade; it does not make excuses or blame the minority. That is the theory of lawmaking in England and the practice of it also.

Some defects of the English system. But this system of lawmaking has the defects of its qualities. It is hard on the private member, especially on the "back-bencher" who is not prominent in the councils of his party. His power to initiate legislation, although supposed to be unlimited except as respects money bills, is in reality very small. It amounts to much less than that of the individual Congressman. He can bring in a private member's bill but his chances of getting it considered, much less of having it passed, are exceedingly slim. The standing orders, the traditions of the House, even the theory of min-

isterial responsibility are all against him. True enough, he may suggest amendments to government measures when they are in the committee stage, and a minister who desires to get his measures through will do what he can to conciliate the back benches, especially if they represent the trade unions when a Labor government is in power. Occasionally a private member, by reason of his special knowledge concerning the matter in hand, may become an influential factor on the floor; but such cases are exceptional.

A too-powerful cabinet. In a word the cabinet is responsible for initiating virtually all important measures and for steering them safely through both chambers. At every session it presents a sizable grist of bills and these have the right of way. There is very little time for anything else. If individual members get in the way the cabinet rolls over them with its loyal majority. It is one of the agreeable fictions of British government that the Commons controls the cabinet; but with a majority behind it the cabinet, according to Ramsay Muir, is a "dictatorship qualified by publicity."¹⁴ This may be too strong a statement, but in the process of lawmaking the power of the British cabinet is very great.

Limitation on debate: 1. In the American House of Representatives.

Both the House of Commons and the House of Representatives have devised ways of bringing a debate to a close and preventing obstruction by the minority. Many years ago the House of Representatives adopted a rule that no Congressman might speak for longer than one hour except by unanimous consent, and about the same time it was agreed to amend the rule relating to the previous question so that it might be used more effectively in shutting off debate.¹⁵ A motion that "the previous question be now put" may be made by any Congressman, and if the motion prevails, with a quorum present, the vote on the main question must be taken at once. A motion that any matter be laid on the table is also in order, and with a few restrictions may be offered at any time. It must be voted on without debate, and when carried it settles not only the amendment under discussion but all other amendments and the main question as well.¹⁶ A more common and less drastic method of shutting off discussion in the House of Representatives is by an advance agreement as to the time at which the debate shall be brought to a close. The committee on rules, after consulting the leaders on both sides, recommends a time limit and the House accepts it. Then, when the time limit is reached, the speaker brings down his gavel and the vote is taken.

2. In the House of Commons. Nearly all great legislative bodies, sooner

¹⁴ *How Britain is Governed* (3rd edition, London, 1935), p. 89.

¹⁵ The "previous question" rule, in its original form, was first adopted by the House of Commons in 1604. It was put into the first set of rules adopted by the House of Representatives in 1789.

¹⁶ Robert Luce, *Legislative Procedure* (Boston, 1922), p. 276.

or later, find it necessary to devise some means of defense against willful obstruction by filibustering minorities. More than 300 years ago the House of Commons adopted a rule whereby a member might move that "the main question be now put," and this arrangement served well enough until the latter part of the nineteenth century. Then, during the early eighties, it did not prove strong enough to prevent the deliberate obstruction which marked the debates on Irish questions. On one occasion (1881) the House was held in continuous session for forty-one hours while the Irish Nationalists filibustered to prevent the introduction of a coercion bill.

The closure. These tactics led to the ultimate adoption of the closure. Under this arrangement a member may move the previous question at any time, even when another member has the floor. Then, unless the speaker decides that the taking of an immediate vote would be unfair to the minority, the motion must be put to a vote without further amendment or debate. To be carried the motion must be supported by at least 100 members. But even this form of closure did not put an end to obstruction where the clauses of a long bill were being taken up one by one in Committee of the Whole House. The previous question had to be invoked on every clause. So the House of Commons devised another weapon for handling obstruction.

Closure by compartments. This is the process known as closure by compartments—which is the application of the previous question to a group of clauses in a bill. The minister who is in charge of the measure moves, for example, that clauses seventeen to twenty-three "stand part of the bill." Then, if the speaker approves, and a majority agrees, the debate on these clauses is at an end.

The "kangaroo closure." A variation of this is known as the "kangaroo closure," an arrangement which permits the speaker and the chairman of the Committee of the Whole to select the most worthy amendments for debate and pass over the rest, thus hopping through the list in kangaroo fashion. In the hands of an impartial speaker and chairman this is a useful arrangement for expediting business.

The time-table. By majority vote the House of Commons may also fix a time limit for the consideration of the various clauses of a bill. Then the "guillotine" falls at the expiration of the allotted period whether all the clauses have been discussed or not. But the guillotine is not often called into action except in Committee of the Whole, where its frequent use by the Labor government led to some complaints in recent years. The practice now is to make a time-table whenever an important controversial measure comes up. The minister in charge of the bill then asks the House to approve a resolution allotting so many days to the second reading, to the committee stage, to the report

stage, and so on. The time-table may even assign specified hours to individual clauses.

Conclusion. It will be noted, therefore, that although the nomenclature is different, the methods of expediting measures actually employed by these two great English-speaking legislatures are essentially alike. The closure, in all its forms, in an arbitrary process which ought not to be used except as a last resort. Far better it is, as both Houses have learned, to agree in advance on an apportionment of time which will give both supporters and opponents a fair opportunity to be heard, which will ensure consideration of the important clauses in a bill, but which will nonetheless prevent undue delays or obstructionist tactics. Rules of procedure in legislative bodies exist for two purposes—first, to guard against hasty and ill-considered lawmaking; second, to expedite business. The difficult problem is to find rules that will achieve both these ends simultaneously.

The decline of oratory. The use of time limits and time-tables has had one noticeable result at Washington and Westminster alike. It has brought the golden age of legislative oratory to an end. The days of Pitt and Fox, Webster and Clay, seem gone forever. When only a few hours are available for the discussion of a bill, no member can monopolize the time for a set oration such as those old-time thunderers delivered in their day. The debater who desires to avoid unpopularity with his fellow members, several of whom are sitting on tenterhooks awaiting their turn, must make his deliverance short and snappy. Hence it is said that while the seventeenth-century members quoted passages from the Scriptures, and those of the next two centuries regaled the House with excerpts from the Greek and Latin classics, the twentieth-century M.P. "quotes from nothing at all and is quick about it." In Congress a prosy member is given leave to print; in the House of Commons the less expensive plan is pursued of a general flocking out of the chamber, leaving the orator to cast his pearls of rhetoric at the empty benches. Incidentally it is an unwritten rule of the Commons that a member may not read his speech from manuscript, although the use of notes is permitted.

Due to other factors than time limits. This is not to imply, however, that time limits and time-tables are alone responsible for the decline of parliamentary and congressional oratory. The decline had begun before these limitations came in. Long orations are not in accord with the spirit of the age in which we live. A speech of three or four hours' duration would clear the floor in the legislative halls of any country today. And the tension upon a speechmaker, who has to hold the attention of restless members for a prolonged discourse, has also become far greater than it used to be. The longest speech in the House of Commons since the incoming of the twentieth century was Lloyd George's

famous budget speech of 1909. It took him less than three hours to deliver, but he became exhausted before the end and the House accorded him the courtesy of adjournment for a short period in order that he might regain strength to finish it.

The whole tempo of life has been speeded up nowadays. People travel faster, talk faster, and think faster than they used to do. Time was when Edward Gibbon could write five volumes on the *Decline and Fall of the Roman Empire* and get millions to read them; but the Roman empire would have to decline and fall in one volume nowadays to secure any such quota of readers. Newspaper editorials are usually limited to a few hundred words. Speakers on the radio are customarily restricted to fifteen minutes. The age in which we live seems to be resentful of anything that does not come in concentrated form. So it insists that legislative spellbinders provide themselves with terminal facilities.

In tones of regret some people talk of the decline of oratory, on both sides of the Atlantic. They tell us that eloquence has been laid to rest in the churchyards. But it may well be doubted whether there is much reason to mourn its demise. Emerson once remarked that "the curse of this country is eloquent men." If legislators perorate less nowadays, it may be that they put more substance into their speeches. If there is less eloquence, there may be more wisdom: certainly there is more meaning to what the orators say. Many of the so-called classic orations of the nineteenth century embodied an astonishing dearth of ideas. They were a series of purple patches, of meaningless periods delivered with pontifical solemnity. Take down a volume of Gladstone's speeches, or of Daniel Webster's. You will wonder how such utterances could ever have stirred the souls of men. Both *Hansard* and the *Congressional Record* make dull reading nowadays, and very few people ever wade through their prosy pages; but they are as light literature compared to the volumes of "great orations" which cumber our library shelves. The world has grown tired of oral grandiloquence. *Pectus est quod disertos facit*—as Quintilian says. It is the heart that makes men eloquent.

An excellent, concise sketch of the process of lawmaking in parliament may be found in Frederic A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chap. xvii.

The standard work on English parliamentary procedure is Sir Thomas Erskine May, *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, which is now in its fifteenth edition (London, 1950). The *Standing Orders of the House of Commons* are included. Mention should also be made of Josef Redlich's monumental study of the *Procedure of the House of Commons* (3 vols., London, 1908). Briefer outlines are Sir Courtenay Ilbert, *Parliament: Its History,*

Constitution and Practice (London, 1911), the same author's *Mechanics of Law-making*, and his smaller *Manual of Procedure in the Public Business of the House of Commons* (London, 1908). Later books of value are G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (New York, 1947); W. Ivor Jennings, *Parliament* (London and New York, 1940); and W. A. Robson, *The British System of Government* (London, 1944). Carl Wittke, *The History of English Parliamentary Privilege* (Columbus, Ohio, 1921) deals with an interesting phase of a somewhat related subject.

For analogies and contrasts, reference may be made to F. M. Riddick, *Congressional Procedure* (Boston, 1941), and Clarence G. Dill, *How Congress Makes Laws* (Washington, 1939). The *House Manual and Digest* contains the formal rules of procedure in the House of Representatives.

CHAPTER XIII

Odd Ways at Westminster

The House of Commons needs to be impressive, and impressive it is. The way to preserve old customs is to enjoy them.—Walter Bagehot

Some ancient customs and symbols. The House of Commons is not only an impressive body, but picturesque also, which is because it has retained so many ancient customs and curiosities of procedure. Most of these go back several centuries; their exact origin is sometimes so much in doubt that even the most diligent antiquarians have been unable to explain how they first came into existence. A few of them are clearly the heritage of mediaeval days when the House was made up of burgesses and knights of the shire. Some of the more radical Labor members look upon most of these old customs as bric-a-brac which ought to be thrown away, but the evidences of age (which old customs are) serve to give the House an aura of dignity.

A unique chamber. The oddest thing about the House of Commons is the meeting-place in which its sessions were held for more than 100 years. This unique chamber, as has been said, was gutted during the German air raids in the Second World War, but was restored in its original rectangular shape. Legislative halls in other countries are so planned that every member can have a seat and can sit with his face to the presiding officer. But in the House of Commons there have never been benches for more than two-thirds of the members. And those who occupy them do not face the speaker of the House; they face their opponents. New members sometimes do not always realize that no individual seats are assigned and there are current stories of freshman commoners making early application to the clerk in the hope of getting well placed. A first glance around the old chamber gave the impression of a chapel or huge choir stall. The subdued light which fell from overhead threw a mellowness over the place. There was an air of dignity, leisure, and comfort intermingled with venerableness—all in sharp contrast with the bus-

tling auditorium in which the American House of Representatives semicircles around its speaker.

The new House of Commons. It is not astonishing that time had rendered the old House of Commons too small to seat all the members. It is understandable, too, that its peculiar plan of antiphonal banks of seats derived from the historical accident of its original meeting place in a choir-chapel. Some there were who wanted a new and completely up-to-date design. But the characteristically English decision was to reconstruct the bombed-out chamber just as it was in its two essentials: the banks of benches for "government" and "opposition" facing each other, and seats for about two-thirds of the members. Winston Churchill spoke eloquently in favor of retaining the old arrangements. The oblong shape, he said, favors the two-party rather than the group type of political affiliation. To slip a bit to left or right is easy; to "cross the floor" is a decisive act "which requires serious consideration." A small chamber facilitates the easy, conversational style of speaking, traditional in the Commons, rather than "harangues from a rostrum." It also prevents the feeling of being lost in a vast hall when the business is not such as to call for a full House. Furthermore, "there should be on great occasions a sense of crowd and urgency," with all seats full and members jammed at the back and in the gangways.

In minor matters the new chamber has advantages over the old. It still has but 437 seats for 625 members, but it is now well heated for the first time in its history. It even has air conditioning and improved acoustics, with loud speakers and microphones provided so that the back benchers can hear and be heard as well as the occupants of the Treasury bench. A reminder of the Commonwealth is provided in the furnishings. The richly carved speaker's chair is made of Australian wood and various dominions and colonies have donated other articles from benches to ash trays.

Searching the House. On the morning of the day when a new parliament assembles, a quaint ceremony is gone through. In the early hours of this opening day a detachment of twelve Yeomen of the Guard from St. James's Palace marches to the Houses of Parliament. These guardsmen are colloquially known as "beefeaters," which is said to be a corruption of the French *buffetier*. They come, in the picturesque glory of their Tudor regalia, each carrying a lighted lantern of the pattern of 1600. Accompanied by the lord great chamberlain, who is the custodian of the place, they trudge through the legislative chambers and down into the rooms and caverns below, into every corner of the whole edifice. In and out among the coal bins and furnaces, the gas pipes and the steam pipes, the wine cellars and the rubbish rooms they go—every yeoman keeping step, his eyes to the front. With their eyes to the front

they are looking for kegs of gunpowder placed in some out-of-the-way corner by the enemies of the king!

Origin of this practice. This ceremony of searching the Houses has been gone through at the opening of every new parliament for more than 300 years. Back in the days of James I, a certain Guy Fawkes, a young Englishman who had served in the Spanish army, was hired by conspirators to blow up the old House of Parliament. Fawkes succeeded in placing twenty kegs of gunpowder in the basement of the building, all carefully covered with kindling wood. When parliament assembled, with the king in attendance, the gunpowder was to be touched off. But too many people were let into the secret; somebody told the authorities, and Fawkes was seized in the cellar (with the key in his pocket) on the morning of explosion day (November 5, 1605).¹

Some time later it was ordained, as a precaution against the machinations of any future Fawkes, that the whole place should be searched at intervals, and to this day the quaint formality continues. Parliament has changed its abode since 1605, and there are now no unlighted caverns underneath. But the Yeomen of the Guard continue to make their rounds. Every inch of the building has long been brilliantly lighted by electricity; but the "beefeaters" still carry their flickering lanterns. When they have searched through the miles of rooms and corridors they send a report that "all's well" and are then rewarded, as of yore, with a repast of cakes and ale, ending with a toast to the king.

Prayers. The House opens its daily sittings with the entrance of the speaker's procession. That dignitary marches down the aisle accompanied by the chaplain in surplice and stole, the sergeant-at-arms with his sword, and the mace-bearer with the mace. Then comes the reading of a psalm and a prayer by the chaplain. It is always the King James version of the 67th Psalm. . . . "Oh, let the nations be glad and sing for joy, for Thou shalt judge the people righteously and govern the nations upon earth. . . . Then shall the earth yield her increase; and God, even our own God, shall bless us."

As a rule there are very few members in the chamber when these prayers are being read, and visitors have never been allowed in the galleries until after the chaplain has finished. This rule, no doubt, was born in the days when

¹ For more than two centuries after 1605 every fifth of November was celebrated as a public holiday in England, a day of rejoicing known as Guy Fawkes Day. Even yet it is an occasion of some festivity. There is a well-known ditty:

Remember, remember, the fifth of November,
The gunpowder treason and plot;
For I know no good reason why the gunpowder treason
Should ever by us be forgot.

As for the key which was found on Fawkes, it is still on exhibition at Westminster.

religious bitterness was rife—when the reading of prayers from a prayer book might have been made the occasion of disorders on the part of Nonconformists. Members of the House face the center aisle during the reading of the psalm and then turn their faces to the wall when the prayer is being read. The origin of this curious custom nobody seems to know.² During prayers, by the way, the Treasury bench is always empty. It is not that members of the cabinet have less need for the chaplain's intercession than the rank and file of the Commons, but merely that they do not need to come early in order to reserve their seats.³

The mace. Prayers being over, the doorkeeper shouts, "Mr. Speaker at the Chair." The cry is taken up through the lobbies and corridors, thus warning the loitering members that the day's sitting has begun. The mace is in full view on the table just below the speaker. This indicates that the House is sitting as a House, not in Committee of the Whole House. When the House goes into committee the sergent-at-arms takes the mace from the table and sets it underneath, out of sight. When the House adjourns it is carried off with the outgoing speaker's procession. This mace, which figures so prominently in House procedure, is a wooden staff about five feet long, finely embellished in gold leaf and surmounted by a gilded crown.

Its history in England. The use of the mace goes back to early mediaeval days when the king attended parliament in person. Originally, as we have seen, it was his custom to be present at meetings of his Great Council, and later at meetings of the *parlementum*. When parliament divided into two Houses, the king attended sessions of the House of Lords only. If he had anything to say to the House of Commons he summoned the commoners to the House of Lords, as he still does at the opening of a new parliament. Then he instructed them to go to their own chamber and deliberate upon the matters which were within their province, especially the granting of money. But not having the royal presence with them, in their own chamber, the commoners appear to have desired some symbol of it, some token of the fact that they were meeting by virtue of the royal command and under the king's protection. So this mechanical contrivance was devised at an uncertain date, a wooden staff with a crown on its head, and it became known as the mace. No business is in order until the mace has been placed on the table where it silently reposes till the House goes into Committee of the Whole or adjourns.

A Cromwellian episode. There it has lain for at least 500 years. Were it able to write an autobiography it could tell a long and chequered tale.

² It has been suggested by one excellent authority on the usages of the House that in the old days the members probably knelt at their benches during prayers and that the practice of turning their backs to the chaplain may have originated in this way.

³ Michael MacDonagh, *The Pageant of Parliament*, Vol. I, p. 236.

Quorum pars fui—it might say, for on one occasion the mace was itself expelled from the House. This was in 1653, when Oliver Cromwell became exasperated at the action of parliament in trying to prolong its own existence. With a squad of soldiers he hurried to Westminster and ordered the members out of doors. Then his eye caught sight of the mace on the table. "Take away that bauble!" he bellowed, and the mace disappeared. But it was soon brought back again.

The mace in Congress. Perhaps it may be of interest to mention that the colonial assemblies of America, following the custom of the House of Commons, each provided itself with a mace, and the usage is still continued both by Congress and the state legislatures. In the American House of Representatives the mace is a plain staff surmounted by the figure of an eagle. It is not laid on the clerk's table but stands on a marble pedestal at the right hand of the speaker. When the House goes into Committee of the Whole it is removed from this pedestal, out of view; when the House adjourns it is taken away by the sergeant-at-arms. The mace, in the House of Representatives, is said to be the "symbol of authority," but how many Congressmen know how and why this symbolism originated?

The table. The table which is used by the clerks in the House of Commons and on which the mace reposes, is a massive piece of furniture occupying most of the space between the Treasury and Opposition benches. These two benches, as has been said, face each other from opposite sides of the main aisle, one at the speaker's right and the other at his left. On the table are piles of books and documents which the ministers and their opponents utilize in the course of their speeches. On it, also, there used to be two brass-bound boxes, one at either side, and it was the practice of those who sat on the Treasury or Opposition benches to use these boxes as their pulpits. They often set their notes thereon, and thumped their fists on the oak receptacles to emphasize the salient points in their utterances. Mr. Gladstone, in the course of his long career as prime minister and as leader of the Opposition, punished both of these boxes so severely that the dents made by his signet ring were sometimes shown to visitors as an indication of the vigor with which the great commoner drove home his arguments.

The Treasury bench. The Treasury bench, on the speaker's right, is occupied exclusively by those members of the ministry who are members of the House. If the number present exceeds the capacity of the bench, the senior ministers occupy it and the junior ministers find seats elsewhere on the government side of the main aisle. But so long as there is room on the Treasury bench, the occupant of any ministerial post, however subordinate, has the right to a place on it, provided, of course, that he is a member of the House

of Commons, which some ministers are not.⁴ By an old parliamentary custom, moreover, the two members for the City of London are entitled to sit on this bench, but they never do it (unless they happen to be ministers) except on the first day of a new parliament. On that day they invariably sit there a few moments for the purpose of asserting their ancient right to do so—and this even though they happen to be members of the Opposition.

The Opposition bench. The Opposition bench is of equal capacity, but usage does not precisely define who shall occupy it. In general, however, this bench is reserved for the leading members of the Opposition—which is a rather elastic limitation. As a matter of practice the leader of the Opposition virtually determines who shall sit alongside him on this bench, for no one would venture to go there uninvited. Some of his chief lieutenants are always on hand; others go to the Opposition bench when their presence is desired for consultation during a particular debate. Younger members, of course, deem it an honor to receive such an invitation.

Apart from the honor involved, there is a certain advantage in sitting on one of these benches and in addressing the House from the head of the aisle. For rather curiously there is no other place in the House of Commons where a member can stand and speak face to face with most of his fellow members. Even at these front benches his back will be turned to some of his audience. Of course if he should go to the top back bench on either side he would then have the entire membership of the House in sight; but half the members would have their backs turned to him. Fortunately the acoustic properties of the old House were so good that a speaker could easily be heard no matter where he stood.

The official pew. On the same level as the floor of the House, and to the right of the speaker's chair, there has always been a small enclosure which is colloquially known as "the official pew." Here sit various permanent officials (not members of the House) who may be wanted by ministers during the debate. When some troublesome point is raised by an opposition speaker, the minister steps over to this enclosure and secures material for his reply. It is this practice that has given weight to the cynical assertion that the ministers are merely the spokesmen of their professional subordinates and that the House of Commons is merely a hall of echoes for the sayings of clerks and secretaries.

The hat in the House. Some eccentricities of procedure are associated with hats in the House. Visitors to the Commons a generation ago were surprised to see members sitting with their hats on. The practice of wearing

⁴ That is, some of them are members of the House of Lords. Ministers are not permitted (as has been the case in France) to sit or speak in the chamber to which they do not belong.

hats in the House of Commons was said to be a survival from the days when barons and knights came to parliament in full armor, with helmets of steel that could not be removed. In all probability, however, the custom of hat-wearing had a less chivalrous origin, for members of the House of Lords do not habitually wear their hats during debates, although they are even more directly the descendants of the mediaeval ironclads. The reason why the commoners wore their hats, while the lords did not, is probably because the old House of Commons was not provided with a convenient coatroom.⁵ At any rate the earliest engravings of parliament show the members wearing caps and gowns; then in the seventeenth century they appear without the caps but with flowing capes and swords, their heads adorned with wigs; and it was not until the nineteenth that the hats appeared.⁶ Of late years the practice of hat-wearing in the House has been almost entirely given up.

Headgear and etiquette. The etiquette which has governed the hat in the House of Commons was well established and enforced. A member might wear his hat until he rose to speak or until he moved from one seat to another. Then he had to uncover. (This rule was waived for women members.) Even if he leaned forward to whisper in the ear of the member in front of him he was requested to remove his hat. The lifting of the hat was also used as a signal to the presiding officer. It is in this way, for example, that the minister or member in charge of a bill could move its advancement to the next stage. When the debate seemed to have died down, the speaker looked toward the minister who was in charge of the measure. The latter did not need to rise or speak a word; he merely lifted his hat and the speaker put the question. The speaker also carries a three-cornered contrivance which is called a hat. He brings it with him into the House, sets it on the arm of his chair, and picks it up when he leaves. It is manifestly part of his official uniform, but it never goes on his head.⁷

How seats are reserved. It is an unwritten rule of the House that a member (other than one who sits on the front benches) may reserve any unoccupied seat by placing his hat on it. If, therefore, a private member goes out to the lobby, the library, the smoking room, the restaurant, or the terrace, he merely drops his hat on the bench where he has been sitting and departs with the assurance that he will find the place unoccupied when he returns.

⁵ The coatroom of the Commons was located a considerable distance from the chamber and inconvenient to use. The lords, on the other hand, not only have a "robing-room" but there are liveried messengers in attendance to take and fetch their belongings.

⁶ See the reproductions in A. F. Pollard, *The Evolution of Parliament* (new edition, London, 1926).

⁷ The lord chancellor, who presides in the House of Lords, has a similar "hat" but he wears it atop his wig on certain formal occasions. Both presiding officers wear "full-bottomed" wigs of seventeenth-century style.

Due to the relatively small attendance when routine business is under consideration, there is not much occasion for members to reserve seats in this way; but on the opening day of a new session or when an important debate is scheduled, the quest for seats becomes lively. So a good many members (especially new members) have long had the habit of going to the chamber some hours before the sitting begins and reserving seats for themselves by depositing their headgear in favorable locations. Those who did not take this precaution might have to find seats in the lower gallery (which is reserved as an overflow place for members) or might even have to stand during the proceedings.

An episode of Irish flavor. This method of reserving seats has had its humors. Many years ago, when the Irish Nationalists were in the House, one of their number conceived the idea of reserving enough seats for the entire membership of his party, nearly 100 in all. So in the gray dawn of the day on which a new parliament opened, he came to the House with a huge armful of hats and caps of varying sizes, shapes, and ages. One by one he deposited them at suitable intervals on the best benches of the chamber and when the House assembled he passed the word to his fellow Nationalists that all the good seats were theirs for the taking. But the Tory members did not appreciate the humor of this proceeding. They protested against such trifling with an ancient tradition. Whereupon the House ordered an investigation of the whole question of reserving seats, and it was finally agreed that for the future a seat should be reservable only by the use of a member's own hat, and not by using what is termed in theatrical parlance, a "property hat." Under the new regulations, moreover, a member may now reserve a seat by leaving his card on it, which is what he usually does.

The wearing of swords. The usage of the House is friendly to hats but unfriendly to swords. No member (with one exception) may bring into the House a sword, or anything that looks like a sword, not even a drawing-room rapier such as the sergeant-at-arms girds to his belt. This prohibition recalls the days when the gentlemen of England wore swords that were sharp. During a heated debate it was not uncommon for a quick-tempered knight to reach a hand to his sword-hilt.⁸ His opponent across the aisle would sometimes meet the threat by doing likewise. There are several recorded instances of members drawing sabers and starting for each other, while friends on both sides intervened to avert a duel. So the House, in its wisdom decreed that a line be drawn—a thin red line—on the matting of the center aisle, about twenty-four inches from the lower benches on either side. Then it ordered

⁸ The custom of wearing swords in the House continued until nearly the close of the eighteenth century.

that no member, in addressing the House, should step over this line.⁹ This keeps the opponents more than two swords' lengths apart. The red lines still appear in the rebuilt chamber.

Exceptions to the rule. This diminished the danger of jousts in the chamber, but members might still settle their differences by a duel in the lobby, so the House eventually forbade the wearing of swords altogether. So strict is the prohibition that when distinguished military or naval officers come to the Houses of Parliament in formal dress they must unbuckle their weapons and leave them with the doorkeepers. The only exception to the rule is made in the case of the two members who move and second the address in reply to the speech from the throne.¹⁰ In accordance with a custom that goes back to time immemorial, these two members may appear in court uniform, with swords and scabbards, but only for the day upon which the moving and seconding is done. And the knightly paraphernalia, even on this one occasion, sometimes becomes an embarrassing adjunct to their carefully prepared speeches, by getting entangled with shaky legs at critical moments.¹¹

The bar of the House; prisoners at the bar. Just inside the swing-doors which guard the main entrance to the chamber is a sliding brass rail which can be used to close the center aisle. This is the "bar of the House" which figures so frequently in the annals of parliament. When the House orders anyone before it, he is escorted to this bar by the sergeant-at-arms or his deputy, and on many occasions some hapless offender against the dignity or privileges of the House has been haled there for judgment. In former days the prisoner at the bar was compelled to kneel while the speaker solemnly pronounced the censure of the House or even sentenced him to imprisonment. But in 1772 the custom of requiring prisoners to kneel was discontinued by an order which provided that future offenders should receive the speaker's judgment standing.¹² Imprisonment has not been meted out by Mr. Speaker to anyone, member or nonmember, for many years. The last occasion was in 1880 when Charles Bradlaugh, an atheist member-elect, raised a ruction because he was not permitted to take the oath of allegiance in his own way. In the Clock Tower

⁹ This rule, however, has been violated even in recent years. In 1938 one member crossed the floor and struck another member a blow in the face, while the rest of the House was in a turmoil. Nowadays, of course, duels generally remain on the verbal level and some members have become expert at rejoinders which just manage to avoid "unparliamentary" expressions. In a recent (1952) encounter Mr. Churchill was called a "goose" by a Labor member. The rules were searched to find out if this is a permissible epithet. It is.

¹⁰ The sergeant-at-arms wears a sword, of course, but he is not a member of the House and his chair is technically outside the chamber.

¹¹ Sir Henry Lucy, *Lords and Commons* (London, 1921), p. 97.

¹² The immediate occasion for the change, according to one authority, was the action of a certain journalist who was brought to the bar in 1771 for having published a report of the House proceedings. On rising from his knees, after being duly reprimanded by Mr. Speaker, this unabashed offender brushed the dust from his trousers and exclaimed, "What a damned dirty House!" The members did not know whether to be angry or amused.

there are still some detention rooms for the confinement of those whom the speaker penalizes.

Others who have appeared there. But it is not offenders alone who come to the bar of the House. Men of all ranks and reputations have stood there at various times to be questioned by the House, or to make statements, or to plead causes, and indeed on some occasions to receive the thanks of the House for their services to the nation. The gossipy Pepys, as readers of the *Diary* will recall, once came to the bar and successfully defended his administration of the admiralty. The Duke of Wellington was summoned to the bar in 1814 that he might receive the thanks of the House for his services in the Peninsular Campaign. And fourteen years later, Daniel O'Connell came there to plead for Catholic Emancipation. Many other historic examples might be given. Technically, the bar is outside the House and hence beyond the scope of the rule that no one who is not a member may utter a word within the sacred precincts. The American custom of inviting distinguished visitors to address the legislature from the speaker's dais has no counterpart in England.

The gangway. Another term which figures in the parlance of the House is the gangway. It is a passageway running at right angles to the center aisle. Reference is commonly made, therefore, to "the benches below the gangway," or "above the gangway." There is no rule governing where members shall sit (except on the two front benches), but the tendency is for the younger members to find seats below the gangway. This location, in any event, affords a better vantage-ground from which to assail the ministers. The Irish Nationalist members, in the old days, always sat below the gangway on the opposition side—no matter which of the two parties was in power. Hence it was a tradition of the House in those days that the benches below the gangway could be counted upon to furnish trouble if a minister went looking for it.

The noisy section of the House. But in recent years the back benches have not lived up to this tradition. Some of the Labor members, especially the "wild men from the Clyde," supplied noise and interruptions enough when the Conservatives were in power, but with their own party in office they have been quieter. At any rate no group in the House has compensated for the withdrawal of that lively delegation which of old came from the green regions between Cavan and Cork. For more than half a century prior to the First World War these Irish members flooded the chamber with their piquant individuality. They provided much of the eloquence, most of the humor, and all of the disorder. Their quickness of wit atoned for their lack of gentility. One day an absent-minded Conservative member, on finishing his speech, sat down on his tall silk hat and crushed it flat as a doormat. Whereupon an Irishman, from below the gangway, arose and gravely said: "Mr. Speaker, per-

mit me to congratulate the honorable member that when he sat on his hat his head was not in it." A long-winded member, goaded by flippant interruptions, once undertook to abmonish the House. "I am not speaking to you," he said, "I am speaking to posterity." "Hurry-up," bawled an Irish member, "or you will soon have your audience in front of you." Not all the humor has flown from the House even yet, but a goodly portion of it went with the signing of the Irish treaty.

The division lobbies. When the House of Commons proceeds to take a record vote it is not the practice to call the roll as in the American House of Representatives. A "division" is ordered by the speaker, and the House divides in a literal sense. Adjoining the chamber, with entrances from its vestibule, are two rooms known as division lobbies. When the question is put, the members are herded into these lobbies. Those voting *Aye* go to the right; those voting *No* to the left. Meanwhile, electric bells begin to tinkle in the reading room, smoking room, restaurant, and elsewhere, warning members that a vote is being taken. Six minutes are allowed before the lobby doors are closed. Then the members in each of the lobbies pass before a little desk and have their votes recorded. Ordinarily the process does not take long—about ten minutes or so. A roll-call in the House of Representatives consumes nearly four times as long.

Whips and their duties. The marshals of the House are the party whips. It is they who steer the members into the division lobbies and make sure that all stragglers are rounded up. Each political party has two chief whips, senior and junior, besides several assistant whips. The chief whip of the ministerial party must make sure that a majority is within call at a moment's notice, for a defeat in the division lobbies may spell irretrievable disaster to the ministry. The chief opposition whip, similarly, employs his ingenuity to catch the other side napping. Both these functionaries must be vigilant, resourceful, good-tempered, and tactful. They must be constantly in attendance, no matter how dreary the debate becomes, for the House may divide at an unexpected moment. It was Disraeli, I think, who once said that the functions of a chief ministerial whip were "to make a House, to keep a House, and to cheer the ministers." The description holds good today.

Pairs and pairing. Members of all parties are under obligation to let their whips know where they can be found in case a hurry call has to be sent out. And if an important division is impending, each member is in duty bound to get himself paired. The pairing is arranged by the rival whips. Each has his list of absent members who have declared their desire to vote *Aye* or *No*. These members are then paired off, one against another, so far as they will go. The chief whip on the ministerial side holds the titular office of parlia-

mentary secretary to the treasury and draws a salary as such, but he has no duties connected with the treasury. The three junior or assistant ministerial whips also have sinecure positions on the treasury payroll. They are rated as junior lords of the treasury. The opposition whips get no extra emolument but only honor—and the hope of a ministerial post when their party comes into power.

Presenting petitions. Among the present-day functions of the House, the oldest is that of receiving and presenting petitions. Originally the Commons received petitions from the people and presented them to the king. The latter decided whether the petitions should be granted. The petitions still keep coming in, although not in such large numbers, and they no longer go to the crown for consideration. A few petitions are presented at almost every sitting of the House by members whose constituents have prepared them. But they are not read to the House. The member who presents a petition on behalf of his constituents merely indicates its nature and tells how many signatures there are to it. Thereupon the speaker directs him to drop the document into a sack which hangs to the left of the chair. At intervals the contents are carried to the committee on petitions, which is supposed to examine them carefully—but never does.

What becomes of them. When a petition goes into the sack, that is the last of it. "As well might it be dropped over the terrace into the Thames."¹³ Monster petitions come to the House at times, petitions bearing signatures by the hundreds of thousands. They are carried down the aisle by attendants who deposit them at the foot of the clerk's table. Sometimes they are too big for the sack, in which case, after being formally presented, they are carried out again. The whole thing is nothing but a gesture, the shadow of what was once a reality. Petitions play a small part in the House procedure of today, but the tradition of their ancient importance is kept alive by the rule which gives the filing of petitions a priority over all other business in the House, no matter how urgent.

How the House applauds. There is no clapping of hands in the House of Commons. Applause is not given in that way. When a member desires to show his approval of something that has been said, he cries "Hear hear!" Others may join in the chorus until it assumes the proportions of a babel. But these exclamations do not invariably express sentiments of approval. By an appropriate modulation of the voice the words may be made to throw ridicule on what a speaker has said. "The present government has done much to increase the nation's food supply," asserts a minister. "Hear, hear! Hear, hear!" comes the ironical ejaculation from the Opposition bench—which means that the

¹³ Sir Henry Lucy, *Lords and Commons* (London, 1921), p. 106.

members of that party do not believe a word of it. Interjected at just the right moment, these words are often used to puncture a swelling bubble of eloquence. The House uses other forms of vocal interruption. Groups of members join in shouting, "No, No!" "Order, order!" "Retract, retract!" "Division, division!" "Resign, resign!" and so on. Sometimes, in the attempt to howl down a speaker, they keep it up until the House is in a turmoil.

"Naming" a member. The speaker of the House, in his endeavor to restore order, does not pound a gavel in American fashion. He has no gavel. His only weapon is his voice. Above the commotion, he rises from his chair, puts out his hand and quietly commands the honorable gentlemen to be in order. He is usually obeyed. No member is allowed to be on his feet when the speaker is standing. Disraeli once said that in his day "even the rustle of the speaker's robe" was enough to check an incipient riot. But it has not been so on all occasions. Sometimes a speaker has had to expostulate rather vigorously. He may call upon a member to retract the unparliamentary expression which has caused the hubbub, or to apologize for some disparaging reference to a fellow member. In the event of a refusal he may order the offending member to leave the House, or in an aggravated case he may "name him."¹⁴ When the speaker names a member his action is always followed by a motion to suspend the latter from the service of the House. This motion is put without debate and is invariably adopted. The suspension, unless rescinded, is for the balance of the session.

"Spying strangers." Although the House of Commons has provided galleries for visitors the theory still persists that the debates are secret. Visitors are merely tolerated; their right to be present at any time is not recognized by the rules of the House. This is shown by the way in which the House proceeds to clear the galleries when it wants them cleared. No resolve to go into executive session is ever presented, as in the Senate of the United States. Some member of the House, usually the prime minister, merely draws the speaker's attention to the fact that strangers are present in violation of the rules. This ancient custom of "spying strangers" is a signal for the speaker to put the question "that strangers be ordered to withdraw," a question which is not open to debate. If the vote is in the affirmative the galleries are there-

¹⁴ When addressing a member, in the ordinary course of debate, the speaker does not call him by name. Nor is any member designated in that way by his fellow members. It is always "the Honorable Member for So-and-So," or if he be a privy councillor he is referred to as "the Right Honorable Member." Members who belong to the army or the navy are always alluded to as "the Honorable and Gallant Member," lawyers as "the Honorable and Learned Member." A member with a courtesy title (see p. 120, *note*) is referred to as "the Noble Lord," or, in the case of a lady of rank as "the Noble Lady." A member refers to one of his own party as "my Honorable Friend," to a member of another party as "the Honorable Member." The speaker addresses and refers to members in this same way except that he makes no distinction as to party affiliations. When he names a member for disciplinary purposes he says "I name Mr. So-and-So to the House."

upon cleared, even the representatives of the press being ordered out. The only occasions upon which strangers were "spied" in the House since 1914 have been during war emergencies. In these instances not a soul was permitted to remain within earshot except the members of the House, the clerk, and the sergeant-at-arms.

How the House adjourns. Congress does most of its work in broad daylight; the House of Commons prefers the hours of darkness. It often sits late, sometimes very late. Occasionally it sits all night without adjourning. But its sittings ordinarily come to a close before midnight, whereupon the principal doorkeeper steps forth a pace or two into the lobby and in a strident voice calls out, "Who goes home?" Through the library, the smoking room, the side-corridors, and even along the terrace by the Thames, the cry resounds, "Who goes home?" Ministers and private members gather up their papers and drift down the center aisle through the swing-doors while the chorus of "Who goes home?" pours into their ears. Thus the Mother of Parliaments goes home.

A relic of old London. More clearly than anything else among the odd ways at Westminster this cry brings back the London of Pepys and Wren and Defoe. From Westminster to London in those days was a lonely jaunt and the way was not safe for travel by night. The streets of the intervening parishes were policed, to be sure—but only by tiptling constables who spent most of their time in the ale-houses. Thugs and roisterers roamed the poorly lighted roads, and did not hesitate to set upon lone wayfarers, whether in vehicle or afoot. So individual members of the House did not dare go home alone, and it became the practice to send squads of well-armed Yeomen of the Guard to escort those who were ready to leave before the sitting adjourned. As each squad arrived, its commander notified the doorkeeper and he sounded the call, "Who goes home?" Those who were minded to go had the opportunity. Or, if they chose to remain a while longer, the call would be reiterated when the next squad of yeomen arrived. Westminster has now become engulfed in Greater London and there is no safer city anywhere, hence the practice of sending armed escorts has long since been abandoned. But the doorkeeper and his fellow attendants still do their vocal part, even as their predecessors did it 300 years ago.

"The usual time." As a parting word to the members as they file out the doorway, the attendants keep shouting: "The usual time tomorrow, Sir; the usual time tomorrow." But why should the commoners need this reminder? Everybody knows that a quarter to three o'clock in the afternoon is the usual time, for it is fixed in the standing orders, and if perchance there were to be any departure from it by special order, every morning paper in London

would headline the fact. The members of today need no reminder as they leave the House, but there was a time in bygone centuries when they had neither standing orders nor newspapers to inform them. So the attendants assumed the admonitory function and no one has ever prevailed upon them to give it up.

Members of the House cannot resign. In the United States, when a member of the House of Representatives desires to resign, he merely hands his written resignation to the speaker. A writ may thereupon be issued by the governor of the appropriate state for a special election to fill the vacancy. But a member of the House of Commons is not permitted to resign in this direct and simple way. According to a rule which dates back to 1623, no member can resign his seat. Having been drafted for service by his constituents, he must continue as their representative until the existing parliament comes to an end. This rule, of course, is a heritage from the days when service in the House was regarded as a burden to be unloaded at the first opportunity. Today, although the privilege of serving in the House is eagerly sought by Englishmen of all classes, the old rule against resignations persists unaltered.

How this obstacle is overcome. Yet there are practical considerations which make it desirable to relieve an individual member from further service when he insists upon it, and a roundabout way of doing this has been devised. It is provided by the Placemen Act of 1705. By the provisions of this act any member of the House who accepts an office of profit from the crown is forthwith disqualified from further service.¹⁵ The intent of this statute was to safeguard the House against the virtual bribery of its members by the king, whose habit it was to bestow lucrative sinecures upon influential commoners, thereby making them subservient to the royal influence. They became placemen and pensioners of the king, ready to do his bidding in the House. But parliament became concerned at this impairment of its freedom and eventually decreed that the member who went on the royal payroll would thereby vacate his seat.

They "take the Chiltern Hundreds." Now it happens that there is an ancient office in the gift of the crown, known as the stewardship of the Chiltern Hundreds. The Chiltern Hundreds are three parcels of land in Buckinghamshire. Once upon a time this land belonged to the king and a royal steward was in charge of it. But the estate has long since been converted into parks so that there is no longer anything for a king's steward to do. Nevertheless the office has not been abolished. It is kept in existence for the sole purpose of providing a means of exit from the House of Commons. When, therefore, a member desires to vacate his seat, he applies to the chancellor of

¹⁵ For an amendment relating to members of the ministry, see p. 80.

the exchequer for appointment to this nominal post. The request is always granted; a warrant is issued appointing the member to be steward of the Chiltern Hundreds during His Majesty's pleasure, and notice of the appointment is duly inserted in the official gazette. The speaker thereupon takes cognizance of the fact that the member has disqualified himself by being appointed to an office of profit in the gift of the crown and accordingly declares him unseated.¹⁶ This done, the newly appointed steward of the Chiltern Hundreds resigns and makes way for the next member who desires freedom from service in the House. On a few occasions two appointments have been made and two resignations received within twenty-four hours.¹⁷

An odd circumlocution it may seem, and a superfluous one. From time to time some Englishmen have thought it so. More than 150 years ago a distinguished statesman asked leave to bring in a bill enabling a member to vacate his seat by merely handing his resignation to Mr. Speaker, but the House resented the proposed innovation and by a decisive vote refused to allow even the introduction of the measure. Could one find a better illustration of that loyal adherence to ancient customs which is so characteristic of parliament? The House enjoys its old customs, and that is the way to preserve them.

How the House ends its session. For centuries it was the custom of the king to prorogue parliament in person. With a glittering array he came in a royal coach to Westminster, mounted the throne in the House of Lords, summoned the commons there, and read his speech to them. But nowadays parliament is usually prorogued by commission, and the procedure is always the same whether the prorogation is merely the close of a session or a prelude to the dissolution of parliament.¹⁸ The crown appoints five lords commissioners (among them the lord chancellor is always included) to perform the duty. The commissioners, in scarlet robes, take their places on a bench in front of the great throne in the House of Lords. The faithful commoners are then summoned to the red chamber and the lord chancellor reads the king's speech to the assembled gathering. It is always a perfunctory deliverance, thanking parliament and announcing that the work for which the session was called has been completed. When the commoners have heard it they go back to their own chamber and make ready to leave.

¹⁶ The warrant gives the appointee "all wages, fees, allowances and privileges" connected with the office. There are, in fact, no fees or emoluments of any sort—but that makes no difference.

¹⁷ But what if two or more members should happen to want to leave the House at once? In that case there are some more sinecure appointments, notably the stewardship of the Manor of Chipstead, which can be utilized in addition to the Chiltern Hundreds. Occasionally a member has gone out of the House by this Chipstead route.

¹⁸ At a prorogation which precedes a dissolution no announcement of this fact is ever formally made, even though every member knows it. The announcement is published a little later.

There are no votes of appreciation to everybody for everything, as in American legislatures. There are no speeches laden with an exchange of compliments. There is no presentation of a gold gavel or an illuminated address. The speaker, rising from his place, walks backward down the wide aisle between the benches, bowing solemnly to his empty chair.¹⁹ The serjeant-at-arms, with the mace on his shoulder, paces slowly after him. Ministers and members, forgetting their political animosities, gather in groups to say good-bye and to wish each other good luck in the coming election, for a general election always follows a dissolution. The cry of "Who goes home?" again resounds through the vaulted halls as the members pass the portals and are whirled away in the motors that stand chugging in line outside. Who goes home? Some of them have gone home to stay there, for the close of a parliament always marks the end of many political careers.

The odd ways and pageantry of the House are touched upon in many books such as Sir Henry Lucy, *Lords and Commoners* (London, 1921); A. Wright and P. Smith, *Parliament, Past and Present* (2 vols., London, 1902); H. Morrison and W. S. Abbott, *Parliament: What It Is and How It Works* (London, 1934); H. Graham, *The Mother of Parliaments* (Boston, 1911); Michael MacDonagh, *The Pageant of Parliament* (2 vols., New York, 1921); E. Lummis, *The Speaker's Chair* (London, 1900); H. Snell, *Daily Life in Parliament* (London, 1930); J. Johnston, *Westminster Voices* (London, 1928); W. J. Brown, *Guide to Parliament* (London, 1946); S. Gordon, *Our Parliament* (London, 1945); Quentin Hogg, *The Purpose of Parliament* (London, 1947); Lord Hemingford, *Backbencher and Chairman* (London, 1946); and A. P. Herbert, *The Ayes Have It* (London, 1937).

¹⁹ This odd custom is said to hark back to the time when the House met in St. Stephen's Chapel. In those days the speaker bowed toward the altar. The altar is there no more, but the bowing continues. The members of the House, when they enter or leave the chamber during the regular sittings, also bow toward the speaker's chair.

CHAPTER XIV

Parliamentary Finance

This House will receive no petition for any sum relating to the public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the Consolidated Fund or out of money to be provided by Parliament, unless recommended from the Crown.—Standing Orders of the House of Commons, No. 78

Importance of money bills. It is a fundamental principle of sound public finance, generally recognized in both Great Britain and the United States, that no taxes shall be levied or expenditures authorized without specific action by the representatives of the people. This principle has had ostensible observance in England for many centuries, but it has only been strictly observed during the past 250 years. Revenue and expenditure are by far the most important matters that come before legislative bodies, and there are very few important projects of lawmaking which do not, directly or indirectly, affect the interests of the taxpayer. "Who holds the purse holds the power" wrote James Madison in *The Federalist*. He was right. Having full power to tax and to spend, a government needs no other authority. It was through its control of the nation's purse that the House of Commons rose to supremacy. Hence it is not surprising that money bills should take up a large portion of the time which the House devotes to its work. They are regarded as sufficiently important to have a special procedure of their own.

British procedure: 1. The treasury. The pivotal point in British national finance is the institution known as the treasury. It is the lineal descendant of the old Norman exchequer or revenue-bureau of the king. Ostensibly the British treasury of today is officered by a board, the treasury board, as it is called.¹ There are other officers as well, including a permanent secretary to the treasury who is not a member of parliament, but is the head of the civil service.

¹ See above, p. 85.

Its organization. Now although the treasury board is constructed in this plural fashion it is not really a board at all. Its members never meet or perform any collective functions.² The first lord, although he is titular head of the board, does not concern himself with its work unless some emergency arises. The junior lords and the parliamentary secretary are purely political officers. All the functions of the treasury board are performed in its name by the "second lord of the treasury." This official, better known as the chancellor of the exchequer, is a member of the cabinet and one of its most influential members. The financial secretary is his chief assistant in parliament and in administration. It is the chancellor's function to plan the public income and expenditure, to propose changes in taxation, or any measures affecting the public debt, to pilot such measures through parliament, to prepare the annual budget, to collect the revenues, to keep the various public services supplied with funds, to control the currency, and to supervise the banks.³ Surely a big enough task for any one minister! The treasury provides the money for carrying on every branch of the administration, hence its actual head (the chancellor of the exchequer) must keep in touch with them all. And this keeping in touch has developed into a considerable measure of supervision over all the other governmental departments.

A curious anomaly. The treasury board provides, therefore, a good illustration of the gap which so often intervenes between the nomenclature and the facts of British government. Nominally it is a board of five or six members, headed by a first lord who is also the prime minister. But its functions have been wholly transferred to a single official, the chancellor of the exchequer, who, by the way, has now nothing to do with the "exchequer" at all.⁴ He is secretary of the treasury, comptroller of the currency, and director of the budget all rolled into one. His office is the center around which the whole financial system of the United Kingdom revolves. But the chancellor acts always in the name of the treasury board and all his instructions to the various departments go out in the name of the "Commissioners of His Majesty's Treasury."

THE ESTIMATES

2. Preparation of the estimates. The initial step in the financial work of parliament is the compilation of the estimates. In the autumn of each year

² To this statement there is a single exception. The members meet on one occasion, when a new ministry is formed, for the purpose of "calling in" or appointing the various secretaries.

³ Henry Higgs, *The Financial System of the United Kingdom* (London, 1914), p. 81. See also T. L. Heath, *The Treasury* (London, 1927), and R. G. Hawtrey, *The Exchequer and the Control of Expenditures* (London, 1921).

⁴ The exchequer is the auditing department of British government. Its head is the comptroller and auditor-general, who is not a member of the ministry and not even a member of parliament.

a circular is sent by the treasury to the heads of all departments asking them to furnish figures concerning their probable requirements for the next fiscal year. Thereupon the financial officers in the various departments put their pens to paper and when their estimates are ready send them down to the treasury. They must be made in a form prescribed, on uniform sheets, and in considerable detail. Likewise they must be accompanied by explanations of all increases over the estimates of the preceding fiscal year. All fixed charges, or charges upon the Consolidated Fund such as interest on the national debt, the king's civil list and other grants to the royal family, the salaries of judges, pensions, and so on are not inserted in the estimates but are figured separately. A very substantial fraction of the entire national expenditures falls into this category. As for the controllable expenditures, there is a general understanding that if a department desires a sizeable increase in funds for any of its activities, it will consult with the chancellor of the exchequer or with his subordinates in the treasury before including the amount in its estimates. In this way the treasury has something approaching a veto upon departmental increases even before the estimates are made ready for parliament. If a disagreement arises between the chancellor of the exchequer and the head of any department concerning a proposed increase, the matter is referred to the prime minister, or to the whole cabinet for adjudication.

3. Conferences on the estimates. When the estimates are all prepared, and are in the hands of the treasury, the first step is to have them checked with the figures of the preceding year. Numerous conferences then take place between officials of the treasury and officials of the various departments with a view to getting reductions by mutual agreement. Meanwhile figures of probable revenues are prepared by the various departments to the best of their ability, and when the total estimates have been footed up it is usually found that more money is asked for than can be provided by the existing taxes. Hence it becomes necessary to insist upon reductions of expenditure wherever this can be done with the least detriment to the public service, or else to find some new sources of revenue. The chancellor of the exchequer makes up his mind as to the wisest course and then lays the situation before the cabinet. The cabinet, after hearing his recommendations and after a full discussion of the various problems involved, authorizes the chancellor to lay his estimates and proposals before parliament, with such modifications as may have been agreed upon.

The budget speech. The estimates of expenditure, however, do not have to wait until all questions relating to the revenue are passed upon by the cabinet. They are presented to the House of Commons as soon as they have been approved, and preferably at the very opening of the session. A little

later the chancellor of the exchequer makes an elaborate "budget speech" to the House in which he reviews the finances of the past year, the revenue, the expenditure, the national debt, and the surplus or deficit. This review serves as a prelude to a more detailed statement of the financial program for the current year—particularly as regards new taxes, or increased taxes, or reduced taxes. A generation ago this budget speech was an all-day affair, but in recent years it has been much abridged and most of the figures that formerly rolled from the chancellor's tongue, hour after hour, are now given to the House in printed form. Gladstone, during his long parliamentary career, delivered the annual budget speech on thirteen occasions, sometimes reeling off his statistics for hours at a stretch. He did it with a charm which one of his admirers characterized as "setting figures to music." The budget speech, it may be mentioned, is made to the House sitting in Committee of the Whole.

5. The House "in Supply." For several weeks the House devotes a large portion of its time to this financial program, approving the estimates and providing the funds. When debating the estimates it sits as a Committee of the Whole House "in Supply"; when providing funds it sits as a Committee of the Whole House "in Ways and Means." The estimates are presented in sections and each section is taken up in "votes" or groups of items. The financial secretary of the treasury champions the civil estimates; the secretary of state for war is responsible for presenting the military estimates; the secretary of state for air brings in the air force estimates; and the first lord of the admiralty presents the naval estimates. Thus the work on the floor is allotted to the men who know most about it. Amendments may be offered to strike out or to decrease any item; but no increases or new insertions can be proposed except by a member of the ministry, for a standing order of the House (quoted at the head of this chapter) stipulates that no proposal of expenditure can be considered unless it is made in the name of the crown, and only a minister has authority to speak in the crown's name. This means, as a matter of reality, that there is no chance of getting an appropriation for any purpose unless the chancellor of the exchequer agrees to it. So long as he retains the support of the prime minister he is as nearly a financial dictator as can be found in any country that maintains a system of representative government.

6. Changes made by the House. Occasionally, however, if good reasons have been shown during the discussion, the minister in charge of the estimates (after consultation with the chancellor of the exchequer) will himself propose an increase or a new item, but in general the influence of the House is restricted to eliminations and reductions only. In practice, moreover, the House accomplishes very little by way of revision downward, for when the

ministers decline to accept a reduction they can summon a majority of the House to stand by them as a matter of confidence. On minor items the ministers sometimes give way for the sake of party harmony, but on important ones they stand their ground. The result is that the estimates go through with no drastic alterations and in a remarkably short space of time. The opposition concentrates its fire upon a relatively few "votes" and permits the rest to pass without debate.

The principal end achieved by these budget debates is not a reduction of proposed expenditures but a general airing of grievances and a wide-ranging review of administrative policy. If any member of the Opposition is dissatisfied with some action of the food minister, for example, he bides his time until the estimates for that department are reached. Then he may move a reduction in the minister's salary and use this motion as a cover for his attack. But in any event the debates (exclusive of those on the supplementary estimates) must be concluded, as a rule, in twenty-six days. All votes become subject to the closure at the expiration of this time limit.

7. The revenue and appropriation bills. When the estimates have all been voted by the House in Supply, and the various revenue proposals have been approved by the House in Ways and Means, the whole is then embodied in a finance bill and an appropriation bill. The former deals with new taxes or changes in the rates of old ones; the latter authorizes all expenditures that have been agreed upon. Both are thereupon put through the usual stages and passed by the House.

The House of Lords has no power to amend or reject such bills. After the House of Commons has finished with the finance and appropriation bills they are sent to the House of Lords, but the upper chamber has now no alternative but to pass them without amendment. This limitation, it will be recalled, was established by the Parliament Act of 1911. If the Lords receive a money bill at least one month before the end of the session, it goes forward for the royal assent and thereby becomes law irrespective of whether the Lords concur in it or not. The royal assent, of course, is a mere matter of form, and when it is given the appropriations become available to the various departments. Then the treasury proceeds to raise the revenues that have been authorized.⁵

Votes on account. But while all this estimating, debating, and assenting is going on, money must be had to carry on the government. To meet this need the House of Commons passes various "votes on account"; in other

⁵ Increases in the rates of income taxes, or excises or customs duties, when proposed in the budget speech, go into force at once—before parliament has passed the finance bill and presented it for the royal assent. If for any reason the proposed rates do not go through, the additional taxes are refunded; but this rarely occurs.

words, it grants sufficient funds to carry the various departments along until the annual appropriations become available. These votes on account are lumped together in a bill which is enacted early in the session. This bill also provides a sufficient grant of money to cover any deficits that may have been incurred during the previous fiscal year.

ENGLISH AND AMERICAN BUDGETARY PRACTICE

The centralization of responsibility for British national finance. It will be noted from the foregoing outline that the British national budget is framed, presented, debated, and passed in two divisions, one dealing with expenditures and the other with revenue. But both divisions emanate from the same source, namely, the cabinet, and they are considered by the same body, that is, by the House of Commons sitting in each case as a Committee of the Whole House under two different names. The essential unity of the British financial system arises from the fact that the chancellor of the exchequer, with the aid of his fellow ministers, is responsible for preparing the entire budget, responsible for what it contains, and responsible for getting it adopted by parliament.⁶ The concentration of financial responsibility is complete, which is not yet true of budget procedure in Congress despite the marked progress which has been made during recent years.

Comparison with American procedure. In the United States the estimates of expenditure are compiled by the director of the budget from figures submitted to him by the various departments. The director of the budget transmits these estimates to the president who, in turn, forwards them to Congress with his recommendations. Thus far the British and American procedures are substantially alike, inasmuch as the executive in both countries takes the initial step and submits to the legislative body a general plan of national expenditures. But there the parallel ends. In the House of Representatives the estimates go to a committee on appropriations which may recommend changes in them at will, either up or down, and from this committee they go before the whole House which has an unrestricted right both by law and by usage to increase, decrease, insert, or eliminate. There is no rule, as in the House of Commons, that additions may only be made on recommendation of the executive. And after the House of Representatives is through with the estimates, the Senate of the United States (unlike the House of Lords) takes them in hand, making such further changes as it may desire. In a word there is no such firm executive control over financial measures in Congress as is

⁶ For a full discussion and criticism of the procedure see J. W. Hills and E. A. Fellowes, *The Finance of Government* (London, 1932).

exerted by the British ministers in parliament, and hence there is no such clear fixation of responsibility.⁷

There is a further difference. In Congress proposals for raising the necessary revenues come from the secretary of the treasury through the president, but they may also be brought forward by any member of the House on his own initiative. And in either case they are considered by a different committee from that which handles the appropriations. Expenditures are handled by one set of men, and revenues by another, each working separately. The chairmen of the two committees confer a good deal, and a certain amount of team play is secured; but the responsibility is divided. Finally, it will be noted that in the House of Commons, when appropriations or revenue measures are under discussion, the heads or other chief officials of the executive departments (being themselves members of the House) are on the floor to explain, defend, and answer questions. In Congress this is not the case. The head of a department may be asked to submit explanations in writing, or to come in person before a congressional committee; but he does not appear on the floor of the House or the Senate, for he cannot be a member of either body.

Defects of the British procedure: gives too much power to the cabinet. All this does not mean, however, that the British budgetary system, taking it as a whole, is superior to the American. On the contrary there are some respects in which it is inferior. Definite fixation of responsibility is an excellent thing in its way; it makes for economy in public expenditures, but it inevitably involves a concentration of power. In Great Britain the cabinet, not the House of Commons, is the body which really controls the finances of the realm. And the cabinet is tributary to the chancellor of the exchequer, who is its financial chief and adviser. To this it will be replied, of course, that the chancellor is merely the creature of the House and absolutely responsible to it, which is all true enough if one is discussing the theory of English government. But the fact is that the House of Commons, with all its theoretical control of the ministry, does not often increase or diminish any large item in the budget against the chancellor's will. Theoretically absolute, its power in practice is far from being so. The occasions on which the House has virtually compelled the chancellor to accept changes, against his own judgment and wishes, are very rare.⁸

The compromise. Still, neither the chancellor of the exchequer nor his

⁷ For a more detailed discussion of the American procedure see W. B. Munro's *Government of the United States* (5th edition, New York, 1946), pp. 385-392, and the accompanying references (p. 397).

⁸ One such occasion arose in 1937 when the chancellor of the exchequer, Neville Chamberlain, found so much unexpected opposition among the members of his own party in the House that he withdrew certain tax proposals of great importance and permitted other significant changes to be made in the budget.

colleagues wish to take the chance of driving their followers to mutiny. On the contrary they are politically minded and sensitive to public opinion. They avoid, so far as practicable, the submission of proposals which stir up opposition among the people or arouse undue antagonism in the House. Even on the floor, after the proposals have been presented, they will give way if it seems political strategy to do so. With due allowance for all this ministerial sensitiveness and courtesy, however, the English cabinet is the real controller of the national purse. If the British budget, in most cases, were put directly into effect as soon as it has been approved by the cabinet, without going to the House at all, its final figures would not be appreciably different. But in that case the Opposition would be deprived of what is now its best opportunity for launching its criticisms against the general policy of the government.

Deadens the interest of the individual member. On the other hand the fact that private members cannot move to insert or increase any item causes many of them to lose interest in the budget. For they are interested in opening, not in closing, the public purse. The member, in any legislative body, who displays a genuine zest for cutting down items of expenditure rather than in raising them is likely to get himself regarded as a maverick by his colleagues. The only success that such members are likely to have is to succeed in getting someone else to succeed them at the next election. So, night after night, when the House is "in Supply," the chamber may be half empty. As an Irish member once complained, it is "overrun with absentees."

The dry budget debates. It is hard to imagine anything more dreary than these "debates" on the estimates—dreary for everybody except the minister who is putting his items through and the few Opposition critics who are nibbling at him. The ministers can sit snug, for they know that time is on their side. When the twenty-six days are up, the estimates must be voted on, and they have the votes to put them through. Hence, although the discussions appear to be conducted in a go-as-you-please fashion, the estimates are really put through the House of Commons under greater pressure than is the case in the House of Representatives. Sometimes half the entire estimates go through at Westminster in a single day—the last day. This means that millions are voted without any parliamentary discussion at all. It is a fair criticism of the British House of Commons, and one often voiced by its own members, that inadequate discussion is devoted to the financial problems of a great empire which is hard pressed to raise the billions of pounds sterling that it now spends each year.

The control of disbursements. When the appropriation and finance bills have been duly passed by parliament, and have received the royal assent, it is the function of the treasury to carry them into operation. Practically all

the national revenues, whether from customs, excises, death duties, income taxes, or such national services as the post office, go into a repository known as the Consolidated Fund. This fund is kept on deposit in the Bank of England, from which it is checked out to the paymaster-general who distributes it in payment of salaries and bills. Before any transfer of money to the paymaster-general is made, however, it must be approved by the comptroller and auditor-general, an officer of high standing who is head of the "exchequer," independent of the treasury and responsible to parliament alone. His duty is to make certain that an appropriation to cover the expense has actually been made by parliament and that this appropriation has not been already exhausted.

All appropriations are still made "to the crown" as they were in the Middle Ages. But they are earmarked for the use of specified departments or services, and it is not within the power of the crown to divert the money to other uses. On the other hand the spending of an appropriation is not obligatory. The treasury can withhold an expenditure after it has been authorized and leave the money unspent.

Transfers from regular appropriations: 1. In America. In the United States, when Congress appropriates money for the use of the various departments and services, the heads of these departments are not given much discretion in spending it. Money voted for the needs of one bureau in a department cannot be used for the needs of another bureau in the same department, nor can funds voted for one purpose be used for another purpose even within the same bureau—for salaries, let us say, instead of materials and supplies. The American tendency is to tie the executive officials tight by designating in precise detail the purpose for which the money can be spent. If an amount is appropriated for equipment, and the equipment turns out to be unnecessary, this money cannot be used for materials, or supplies, or services, or anything else that might be accounted just as useful. It is true that during the long Roosevelt administrations (1933-1944) large sums were placed at the disposal of the chief executive without much restriction as to the precise way in which they should be used. But the situation during these years was one of great urgency. Under normal circumstances Congress decides how every dollar shall be spent.

2. In Great Britain. In Great Britain a good deal more latitude is allowed. There the appropriations are arranged by "votes," which are divided into subheads, and these, again, into items. Parliament passes the appropriations by votes, not by subheads or items, leaving to the treasury the right to transfer money from one subhead or item to another. Thus it is less rigid than Congress in earmarking appropriations for specific purposes; but the treasury in England takes up the slack that parliament leaves. Next to nothing can

be done in any department by way of changing the details of expenditure, the salaries of clerks, or the duties of public employees without the approval of the treasury. If the home office wants an additional inspector of constabulary, or the foreign office desires to add an additional secretary to the staff of a British embassy somewhere, a request must be submitted to the treasury (the chancellor of the exchequer) and sanctioned before it becomes effective. This paternal authority of the treasury rests upon long usage and is not now questioned or resented by the various departments. It has the merit of allowing all reasonable leeway while providing a definite responsibility for the details as well as for the gross amounts of expenditure.

The Bank of England as fiscal agent. In connection with British national finance the Bank of England deserves a word, for it is the depository of the national funds and the government's chief fiscal agent. Founded in 1694 for the purpose of providing the nation with loans, it long enjoyed not only the exclusive right to receive such government deposits as are kept in England but a virtually exclusive right, among English banks, to issue paper money. Prior to 1946 the bank was a private institution in which the government owned no stock and appointed no officials. But in that year the bank was nationalized in accordance with the program of the Labor party. It is now a government institution, but with much the same functions as before. The bank receives the government's revenue, credits it to the proper account, and pays it out under the direction of the paymaster-general. The Bank of England also serves as a registry for government bonds and acts for the government in paying interest upon the national debt.⁹

Auditing the accounts. All the financial accounts of the national government are audited, as noted already, by the "exchequer," which is the ancient name now applied to the office of the comptroller and auditor-general. This official is appointed by the crown, holds office during good behavior, and cannot be removed except "by address," that is, by a formal request to the crown from both Houses of Parliament. He has no power to disallow any item of expenditure and merely reports irregularities to the treasury for such action as it may see fit to take. But he also makes an annual report to parliament, and this report is referred to the standing committee on public accounts which is appointed in the House of Commons at the beginning of each session. A leading member of the Opposition is usually appointed chairman of this committee. Its business is to go through the report and accounts, noting cases in which the appropriations have been exceeded, hearing explanations of any

⁹ For the history of the bank see W. D. Bowman, *The Story of the Bank of England from Its Foundation to the Present Day* (London, 1937), and Sir John H. Clapham, *The Bank of England*, (2 vols., New York, 1945).

irregularities, and finally reporting to the House. The moral effect of such a report is considerable.

Henry Higgs, *The Financial System of The United Kingdom* (London, 1914), is still of much value despite its age. A more up-to-date book on *The Finance of Government* by J. W. Hills and E. A. Fellowes (London, 1932) is both explanatory and critical of the system. F. C. Dietz, *English Public Finance* (New York, 1933), is also valuable. Mention should likewise be made of E. H. Young, *The System of National Finance* (2nd edition, London, 1924); H. J. Robinson, *The Power of the Purse* (London, 1928); Walter A. Morton, *British Finance, 1930-1940* (Madison, Wisconsin, 1943); and Ursula K. Hicks, *The Finances of British Government, 1920-1936* (London, 1938). T. L. Heath, *The Treasury* (London, 1927), is an excellent general survey, published in the Whitehall Series. A good brief account of English budget procedure (with a bibliography) may be found in A. E. Buck, *The Budget in Governments Today* (New York, 1934).

More general works on public finance are H. Dalton, *Principles of Public Finance* (4th edition, London, 1927); A. C. Pigou, *A Study in Public Finance* (London, 1927); and G. F. Shirras, *The System of Public Finance* (London, 1925). Considerable data concerning public financial policy is included in Sir John H. Clapham's elaborate *Economic History of Modern Britain* (3 vols., Cambridge, 1938), and in the same author's treatises on *The Bank of England* (2 vols., New York, 1945).

CHAPTER XV

English Political Parties: A Sketch of Their History

Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. If parties cause some evils, they avert and mitigate others.—Lord Bryce

Why political parties go with popular government. No discussion of the art of government should disregard the place and function of political parties in the mechanism of rulership. True enough, political parties are not usually a part of the government; they are below or behind it; they do most of their work in the twilight zone of politics; yet their rôle in the actualities of a representative system is undeniably great. No free large country has ever been without political parties, as Lord Bryce has said. No free country ever can be without them—and stay free. Parties of one kind or another—Lancastrians and Yorkists, Cavaliers and Roundheads, Whigs and Tories, Liberals, Conservatives and Laborites—have been functioning in England for at least 500 years, ever since England had a parliament worthy of the name.

The British origin. England, in fact, is the ancestral home of political parties as we now understand them, that is, of groups organized to promote by peaceful means their own conceptions of the general welfare. Political parties, in this sense, are of British origin because responsible government is of British origin. Partyism and responsible government are inseparable; one goes with the other. Thoughtless people sometimes assure us that the world would be better off if partyism and party rivalry were amputated from the body politic—but when the operation is successful the liberty of the individual dies in the process. This has been shown in those countries where all political parties except the dominant one have been snuffed out.

The choice among alternatives. Parties are inevitable because the people

of any country, when given the privilege of disagreeing about their government, are sure to take advantage of it. They will not be of one mind as to how the government ought to be carried on. On the other hand, they will not split into an indefinite number of small groups. They will range themselves into two, three, four, five, or some other small number of parties—because there are only so many possible attitudes toward the more important political issues. It is a common saying that there are two sides to every question. In politics there are often more than two. Take the matter of taxes, for example. You can raise them, lower them, revise them (by raising some and lowering others), or leave them as they are. Here is a political issue with at least four sides to it, and consequently it affords an opportunity for at least four groupings of political opinions.

So it is with other political problems; the alternatives are reduced by the nature of the issue, or by practical considerations, to five, four, three—and frequently to two. Anyhow, as someone has cynically remarked, there are only two sides to a public office—the outside and the inside. Parties exist, therefore, because although men and women are ostensibly free to form their own individual opinions on political questions they find themselves confronted with a limited number of alternatives, and, if you will, a limited number of offices.

A help or a hindrance? There has been much controversy as to whether political parties are good or evil. Most of this discussion is beside the point. The vital question is not whether political parties are a bane or a blessing, but how can they best be made to serve the interests of democratic government. How can we make them help, not hinder, a scheme of government by the consent of the governed? And the answer to this vital question will never be secured by ignoring the existence of political parties, or by endeavoring to describe a government on the assumption that they can be left out of the reckoning.¹ Political parties, by whatever name they may be known, should be regarded in the same light as parliaments, presidents, prime ministers, and courts—as an essential part of the governing mechanism.

THE EARLY EVOLUTION OF PARTIES

The earliest parties or “factions.” As for the origin of parties, they probably began with human nature. Men have thought in groups ever since they began to think. It is much easier to think that way. Thinking is work. The generality of men prefer to let others do it for them. They take their

¹ One of the most remarkable things about the older books on English government is the way in which they ignored this topic. They dismissed parties and partyism as irrelevant to the main theme. Until Lowell's *Government of England* appeared in 1908 no book on the subject contained a good discussion of English political parties in their relation to the actual workings of English government. This was due to the bias of the older authors in favor of the legal approach, and parties lay outside the law.

opinions ready-to-wear. It is sometimes said that these earliest groups were factions, not parties. That is true, for they were literally, not metaphorically, at swords' points with each other. Victory was not decided by counting heads, but by breaking them. Battle-axes, not ballots, were what settled the outcome. The faction which won took all the power and all the privileges. Those who lost were regarded not as a misled minority but as enemies of the state.

Evolution of parties in England. The student of history does not need to be reminded of the factional groupings which existed from earliest times down to the close of the Middle Ages. Perhaps it has not occurred to him that these were political parties in embryo. Their aim was to get the upper hand, to control the affairs of the community. If we call them factions rather than parties it is only because their methods were crude or violent. In mediaeval England these political factions fought each other not only on the floor of parliament but sometimes on the battlefields as well. The Wars of the Roses were the work of politicians who had not yet learned to settle their controversies by the arbitrament of the ballot box. These wearers of the red rose and the white rose were members of rival parties, dynastic and anti-dynastic parties. So were the Cavaliers and Roundheads of the Stuart era. Today we would call them Monarchists and Republicans, Legitimists and Reconstructionists, Conservatives and Progressives, or by some such appellations.

Whigs and Tories. A little later, when the supremacy of parliament became definitely established under William III, the nicknames "Tory" and "Whig" regularly replaced the older designations. The Tories perpetuated, in large measure, the traditions and opinions of the Cavaliers while the Whigs did the same for the Roundheads, but with this difference, that it was no longer necessary to change the monarch in order to change the government. Changing the government now meant getting control of parliament, and to this task both parties devoted their energies. Their rivalry was transferred from the battlefield to the forum.

Yet the rivalry of the parties was no less keen than it had been in the age when a clash of arms decided the issues. Throughout the eighteenth century the Whigs and Tories fought each election as though the destiny of the nation depended on it. First one party succeeded, then the other. The Whigs controlled a majority in the House of Commons during the greater portion of William III's reign; then the Tories replaced them for the most part until 1714. Here the alternation came to an end, and for the next forty-seven years the Whigs held the mastery without interruption.² Toward the end of the eighteenth century the Tories managed to work back into power once more,

² This was partly due to the great genius of Walpole as a practical politician. He was prime minister from 1721 to 1742. But it was also due to the misfortune of the Tories who became involved in the two unsuccessful Jacobite rebellions of 1715 and 1745.

and from the era of the American Revolution to the eve of the Great Reform Act their hold was almost unshaken.

FROM THE GREAT REFORM TO THE GREAT WAR

Political parties since the reform of parliament. Since the great reform of parliament in 1832 the alternations in party ascendancy have been more frequent. The old nicknames "Tory" and "Whig" were gradually discarded after this date and the more designatory appellations of "Conservative" and "Liberal" took their place. The Conservatives continued the Tory tradition, but in a somewhat modified form. They were the partisans of the established order and opposed most of the notable reforms which followed one another in quick succession during the years 1832-1835. The Liberals, on the other hand, championed these reforms in government, in industry, and in social welfare.³ As time went on, however, the Conservatives softened their conservatism and proceeded to do some reforming on their own account. Under the leadership of Sir Robert Peel, some of them joined with the Liberals in repealing the Corn Laws, for example, thus removing the import duties on grain and definitely committing the country to the policy of free trade. Incidentally this action split the party wide open, and when the reactionaries once more got the upper hand the free-trade Conservatives were compelled to take refuge in the Liberal camp.⁴

The Victorian era. It was around the middle of the nineteenth century that English party lines became well defined and consolidated. Conservatives and Liberals joined issue on the great political questions of the period. In general the Conservatives championed the prerogatives of the crown, the powers of the House of Lords, the privileges of the Established Church, the interests of the landowner and farmer, as well as the cause of British imperialism. They drew their chief strength from the rural areas, and were supported by the nobility and gentry, the clergy and the yeomanry. Under Disraeli's leadership their supporters began to include middle and working-class elements as well as the rich brewing and distilling interests. The Liberals developed into a predominantly middle-class, urban party; the party of those who had risen economically with the expansion of British industry and trade. Many wealthy industrialists were Liberals chiefly because they were firm believers

³ For example, the Factory Act (1833), the Poor Law Act (1834), and the Municipal Corporations Act (1835). However, many Tories supported the Factory Acts and some Radicals opposed them, owing to the fact that the latter were members of the rising manufacturing class whereas the Tories depended upon land rents and agriculture.

⁴ After 1846 the Peelites almost formed a separate party for a time, and the modern Liberal party in England is usually regarded as dating from the fusion of the Peelites and the Whig-Liberals and the rise to leadership of Gladstone.

in free trade. The "temperance" people, including most Dissenters (Methodists, Baptists, and the like), were Liberals because they identified the Conservatives with the liquor interests.

The Liberal policy was to change existing conditions in government and industry, both of which had drifted out of touch with the new conditions of life. Their economic ideal was freedom of trade, free competition, laissez-faire. They favored the extension of the suffrage and believed that if the worker were duly enrolled as a voter all other things would be added unto him. Fundamentally the difference was that the Conservatives habitually looked upon themselves as the guardians of rights which had become sanctified by tradition, notably those of the landed classes, while the Liberals claimed to be the party of individualism, progress, and emancipation.

Disraeli and Gladstone. It is true, of course, that the actions of the two parties did not always square with these professions. At times the Conservatives found themselves promoting electoral reform while the Liberals opposed it—for example, on the question of household suffrage in 1867. Two great opposing leaders came to the front during this period—Benjamin Disraeli and William Ewart Gladstone. Disraeli, the child of middle-class Jewish parents, began his political career as a reformer but became the idol of the Conservatives. Gladstone, the son of a baronet, a graduate of Oxford, was a Tory by inheritance, by temperament, and by early allegiance; but he led the Liberal party for more than thirty years. Under these two notable leaders all Britain ranged itself into rival camps and the two-party system became firmly entrenched. The defeat of the Conservatives always meant the triumph of the Liberals, and when the Liberals lost an election there was never any doubt as to who had won it. There was no need for coalition ministries, and there were none during the long interval from the close of the Crimean War in 1856 to the opening of the First World War in 1914.

The split of 1886; the Irish question. But conditions within the ranks of the two parties, during this long period, were not always serene. A considerable breakdown and realignment took place, for example, in 1886. To understand this episode it is necessary to know something about that ancient trouble in British politics, the Irish question. The task of governing Ireland, as will be shown later, has been one of the most persistent and perplexing of all the great problems that the British people have had to deal with. There was an Irish problem in Plantagenet times, and it persisted under the Tudors. It was fanned into flames of rebellion under the Stuarts. The Hanoverians tried to settle it and failed. Or, more accurately, they settled it but found that it would not stay so. Accordingly the Irish question came full-grown into the nineteenth century, and in spite of renewed attempts at settlement during

the long Victorian era it was still running strong when the twentieth century hove into view.

The home rule issue. Ireland entered into a union with England in 1800, giving up her own separate parliament and becoming entitled to approximately 100 members in the British House of Commons. This union was unpopular in the southern portions of Ireland from the very outset, and these southern constituencies began to elect members of parliament who were pledged to a restoration of Irish home rule. Hence a group of Irish members, calling themselves Nationalists, made their appearance at Westminster and gradually increased in strength as the nineteenth century wore on. Under the leadership of Charles Stewart Parnell, these Nationalists became, during the 1880's, an aggressive element in the House of Commons. Although numbering only seventy or thereabouts, in a House of nearly seven hundred members, they sometimes held the balance of power; and holding it, they could overturn a ministry at will. In 1885, for example, they utilized their tactical position to overthrow the Gladstone cabinet. A Conservative ministry was then installed, but being even less disposed to grant the concessions which Ireland demanded from England, it also incurred the wrath of the Nationalists and was ousted.

The Liberal defection. So it became evident that one or the other of the two major parties would have to effect an alliance with the Nationalists, and this the Liberals proceeded to do. Gladstone, in a fateful decision, committed his party to the Irish cause. His action was not dictated by considerations of political strategy alone, for he had become convinced that the Irish cause was a just one. In 1886, therefore, he brought into the House of Commons a bill providing for the re-establishment of a parliament in Dublin. But Gladstone could not carry the whole Liberal party with him on this issue, and in the end the Liberal ranks were split asunder. About 100 Liberal members of parliament bolted the home-rule bill, went over to the Conservatives, and defeated the measure, thus forcing Gladstone out of office. This affiliation of Conservatives and Liberal-Unionists (as the seceding Liberals called themselves) became permanent.⁵ So did the alliance between the remaining Liberals and the Nationalists. The accession of the Liberal-Unionists gave the Conservative party a great revival in strength, for among the insurgents were many able young parliamentarians. To the same extent it weakened the Liberals, for although they could now count upon the general support of the Nationalists, these Irish members were not always amenable to party discipline.

The new alignment. This realignment of 1886 did not, however, destroy

⁵ The Liberal-Unionists represented the old, aristocratic Whig element which was Liberal by tradition but whose values were essentially those of the Conservatives.

the two-party system in parliament. Liberals and Nationalists continued to vote together on important questions of policy; so did Conservatives and Unionists. In the case of the latter the fusion became so complete that the name "Conservative" fell into disuse and for many years all the members of the party were commonly known as Unionists. Ministers went into office or were cast out on straight party votes; there was no third party holding the balance of power. The Unionists were in power from 1886 to 1892; the Liberals from 1892 to 1895; the Conservatives again from 1895 to 1905; and the Liberals once more after 1905. Under this regular alternation the principle of ministerial responsibility, based upon the two-party system, appeared to be functioning perfectly.

Rise of the Labor party. Then came a new turn in affairs, caused by the phenomenal rise of the Labor party. There were Labor members in the House of Commons before 1900, but they did not belong to an organized party. They were a very small group and counted for little. Save in a few constituencies, the Labor vote, as such, was not well organized or fully marshaled behind its own candidates. In 1899, however, the British Trade Union Congress directed the appointment of a committee to arrange a conference of the trade unions and the socialist societies for the purpose of planning an increased number of Labor members in parliament.⁶ Out of this action, in 1900, grew a federation of trade unions, coöperative societies, socialist organizations, and other bodies under the name of the Labor Representation Committee. This name, a few years later, was changed to Labor party.

Its early efforts. The work of effecting a thorough organization of the new party was now more vigorously carried on, and at the next general election, in 1906, no fewer than twenty-nine Labor members of one stripe or another, Socialist and non-socialist, were successful in obtaining seats. This group perfected a regular parliamentary organization, with its own whips and its own policy. But the Laborites did not yet rank as a third party in the usual sense of the term, for they voted on most occasions with the Liberals. In the country, moreover, Labor remained a loose federation, not a unified popular party. There was an annual congress of delegates representing labor unions, trades councils, socialist societies, and other affiliated organizations, but the congress had not yet become a dominating authority and the local organizations retained a large measure of independence.

The decade preceding the war. From the election of 1906 until the opening of the First World War, accordingly, the Labor party did little more than hold its own in parliament. This was in some measure because of the fact

⁶ Their start was inauspicious. In the election of 1900 they sponsored fifteen candidates of whom only one, Keir Hardie, was successful.

that the party became too closely linked with the Socialists. During these years the strength of the Laborites in the House of Commons was less than fifty votes, but they exerted a much greater influence upon the course of legislation than this figure would indicate. They were in considerable degree responsible for several measures of social and industrial amelioration which the Liberals put through parliament during the years 1910-1914.⁷

DURING AND AFTER THE FIRST WORLD WAR

Party politics during the war. Then came the war, and with it a sudden change in the exigencies of British party politics. A Liberal ministry was in power when the conflict began, but it was presently merged into a coalition cabinet representing all parties. The Labor party was given one member in this cabinet, and during the early years of the war all elements worked in harmony. Political strife was momentarily adjourned, both in parliament and in the country. But it did not remain adjourned until the end of hostilities. Lloyd George replaced Asquith as prime minister, and after this change the old-time Liberals began to lose their strength in the coalition. More Conservatives (Unionists) were called into it and it ultimately became, with the exception of the prime minister and a few others, a Unionist aggregation. Labor then withdrew its participation, and with a considerable body of dissenting Liberals created once more a regular Opposition in parliament.

The "khaki election" of 1918. No general election took place in England during the war. The existing parliament merely prolonged its own existence by passing a statute, thus giving an example of parliamentary supremacy. All political parties were agreed upon the wisdom of avoiding the turmoil of an election until the war could be ended. But immediately after the armistice, while the victors were still in high humor, the Lloyd George coalition ministry decided that it was a propitious time for calling the people to the polls. Hence the "khaki election" of December, 1918, was held. It resulted in an overwhelming victory for the coalition of Unionists and Liberals under Lloyd George's titular leadership.

The end of the coalition and the election of 1922. Very soon, however, the coalition began to disintegrate. That is what party coalitions almost always do after a great victory. In 1922 the Unionists notified Lloyd George that they would no longer support him and as they had formed a large fraction of the coalition's strength he resigned the prime ministership. The Unionist leader, Bonar Law, took his place and advised a dissolution of parliament. In this election campaign of 1922 the Unionists placed before the voters a

⁷ The old National Insurance Act, for example, in 1911, and the minimum wage law in the following year.

program of old-fashioned conservatism, the keynote of which was a demand for "tranquillity." The result was a Unionist victory. They came through the election with more seats than the Liberals and the Labor party put together. Nevertheless Labor made a surprising gain by more than doubling its quota of members in the House of Commons. It now became the official Opposition, while the Liberals went to a place below the gangway.

The Unionist ministry of 1923. The new Unionist ministry, although it rode triumphantly into power with a huge majority in its wake, proved to be short-lived.⁸ It soon found itself confronted with an array of difficult problems, both foreign and domestic. Among them the problem of unemployment was the most serious, and the Unionists (Conservatives) decided that the only way to deal effectively with unemployment was to abandon free trade, to impose a protective tariff, and thus to procure a revival of British industry. To obtain a mandate from the people another general election was called in 1923, with the Conservatives urging the adoption of a tariff on imported manufactured products (but not on foodstuffs) while both the Liberals and the Labor party clung to free trade. The verdict at the polls was against the tariff proposal, but indecisive as regards the forming of a new ministry; for although the Conservatives remained the most numerous single group in the House of Commons, they no longer possessed a clear majority. The Labor party increased its strength in this election and continued to form the second largest party in the House.

Labor takes the helm. When the House of Commons assembled after the election of 1923 the Labor leader (Mr. Ramsay MacDonald) offered a resolution declaring that the Baldwin ministry did not possess the confidence of the House. The Liberals joined hands with Labor in supporting this resolution and the Baldwin ministry thereupon resigned. In accordance with the established custom, the leader of the party which had been mainly instrumental in defeating the ministry was then summoned to become prime minister. Mr. Ramsay MacDonald accepted the post, formed a ministry from the Labor party, and proceeded to carry on the administration.

Its action in office. His cabinet was seriously handicapped, however, by not having a majority of its own adherents in the House. Being dependent upon the Liberals for every day of its existence, the Labor ministry found itself unable to carry out the promises made in the party's platform and thereby disappointed many of its followers. The MacDonald ministry was dominated by men and women who did not disdain to call themselves Socialists,

⁸ The term "Unionist" lost most of its original meaning when the Irish Free State was established—though not entirely so because the Ulster question still remains (see p. 247). There is now no essential difference between Unionists and Conservatives and the former term has gradually passed out of use except for the Ulster Unionists from Northern Ireland.

yet no radical economic changes were put into effect while it remained in office. This was partly owing to the fact that the ministry did not control a majority in the House of Commons except by sufferance of the Liberals who were not prepared to support a radical program. And when a ministry is in office, but not in power, it does not satisfy anybody.

Its fall in 1924. This one was not satisfactory to Labor because the party did not have the votes to put its own program into effect. It was not satisfactory to the Liberals who merely formed the tail of the Labor kite. And as for the Conservatives, they did not relish the unconstructive job of merely opposing every move that the Labor ministry made. Such a situation could not long endure, and in 1924 the Liberals precipitated a crisis by withdrawing the support which they had been giving the ministry.

The election of 1924 and the Unionist victory. The election of 1924 was bitterly contested. The Liberals were forced into the background while Conservatives and Labor fought a pitched battle. The Conservatives, in this campaign, relinquished their demand for a protective tariff and made their appeal to the country by denouncing what they called the pro-Bolshevist tendencies of the Labor party as demonstrated by a treaty with Soviet Russia which the MacDonald ministry had recently negotiated. Their appeal to the partisans of economic stability proved successful, so much so that the Conservatives carried more seats than the two other parties put together. The Labor party lost considerable ground, but it fared better than the Liberals who now found their ranks in the House of Commons thinned to a mere handful.

The election of 1929. The Conservatives were once more in office, with Stanley Baldwin at their head as prime minister. They remained in power until 1929, when the next general election took place. At this election Labor gained heavily and emerged with a representation in the House almost as strong as that of the Conservatives. The Liberals were swamped, and they agreed to support the Labor ministry which once again took office with Ramsay MacDonald as prime minister. For the second time, therefore, the Labor party was in the saddle but without spurs. It was about twenty votes short of a majority in a House of over six hundred members. Hence it had the responsibility of governing the nation without possessing control of the Commons, and this while the country was passing into a great economic depression.

THE NATIONAL COALITION

The coalition of 1931. The Labor party was in the peculiar position of having as titular leader and prime minister a man who had ceased to believe in the Labor program and whose policies were indistinguishable from those of

the Conservatives. As the economic depression grew worse, MacDonald suggested greater governmental economies and a cut in unemployment relief. When his colleagues protested, he compelled their resignation and at once accepted office again as prime minister but with a coalition cabinet containing a majority of Conservatives. In this remarkable move he was supported by only two of his former cabinet ministers and fourteen other parliamentary members of the Labor party. The rest of the Labor group regarded his action as treason to the party and never forgave him. Ostensibly formed to "save the pound," the new government was compelled to abandon the gold standard twelve days after it had been formed.

The prime minister thereupon asked for a dissolution, and at the ensuing general election the national (or coalition) government gained one of the most overwhelming victories in parliamentary annals. It was essentially a Conservative victory, for the Conservatives now had a large absolute majority in the House while their Labor and Liberal allies were a small and uninfluential group. Nevertheless, Ramsay MacDonald lingered on as prime minister, in name at least, until 1935, although unable to make any decisions without Conservative approval. Finally he resigned and Stanley Baldwin again became prime minister with the title as well as the powers he had enjoyed since 1931. In the same year (1935) there was another general election and the Baldwin government was retained in power by a heavy majority. In name it continued to be a coalition, but the Conservatives controlled a clear preponderance in the House and naturally dominated the policies of the government. Baldwin retired as prime minister in 1937 and was succeeded by Neville Chamberlain, who conducted the futile "appeasement" negotiations with Germany immediately preceding the outbreak of the Second World War.

Churchill becomes prime minister. During these years Winston Churchill had repeatedly warned the government that the policy of appeasing Nazi Germany would lead to war and would spell disaster to Great Britain unless all efforts were directed toward preparedness. In May, 1940, therefore, when the Second World War had become a grim reality, and when the successful German invasion of Norway had awakened the British people to the imminence of their danger, Chamberlain was forced to resign and Churchill became prime minister. Included in his new cabinet were representatives of all three political parties, making it in fact as in name a national coalition.

This coalition, under Churchill's aggressive leadership, carried Great Britain through the war. Its diverse elements—Conservatives, Laborites, and Liberals—were held together by the seriousness of the national emergency. No general election was held during the war. Parliament simply prolonged its own life from 1935 to 1945. But when the European phase of the war

drew to a close, the Labor element in the coalition became restive and in due course withdrew its support. With this action a general election could no longer be postponed.

Labor in full control, 1945. It came in the summer of 1945 and resulted in an unexpectedly great victory for the Labor party, which carried nearly 400 seats in the House of Commons—a clear majority over the other parties combined. Clement Attlee thereupon became prime minister in the third of a series of Labor cabinets; but this time Labor was not only in office but in power.⁹ With an adequate majority supporting it in the House of Commons, the Attlee government at once launched into a broad program of social and economic reform.

Social security measures. The nationalization program was accompanied by social legislation of an equally far-reaching character. The Beveridge plan for “cradle-to-grave” social security, first presented in 1942, was carried out in its principal features. The Family Allowances Act (1945) and the National Insurance Act (1946) provided cash benefits for families, varying with the number of children, and established a joint contributory insurance scheme to provide for sickness, unemployment, maternity, retirement, and other benefits, as well as a National Assistance plan to help those in need not otherwise covered. The National Health Service Act (1946), partly supported by funds collected under the National Insurance Act, provided for a complete dental, medical, and hospital service for everybody in Great Britain without direct cost to the person using the service, except for a nominal one-shilling charge for prescriptions. Under this scheme the hospitals were nationalized. An extensive new housing program was undertaken, and much of this constructed under plans formulated by the ministry of town and country planning. Local planning authorities were also given increased powers. While the Conservative party has been opposed to the nationalization of industry, it has not been antagonistic to the social security legislation of Labor, although criticizing sharply the way in which some of this legislation has been administered. And even as regards nationalization the differences are less extreme than one would suppose, judging by campaign oratory.

The election of 1950. As the end of parliament’s five-year term drew near, Mr. Attlee was compelled to decide upon a date for the general election. He chose February, 1950. But the Labor party had been slipping in public esteem, and at this election it was returned to power by a majority over the Conservatives of sixteen seats and an over-all majority of only five. This was not really a satisfactory working majority and Labor again appealed to the country in October, 1951. The Labor program had encountered difficulties at

⁹ For full details see R. B. McCallum and Alison Readman, *The British General Election of 1945* (Oxford University Press, 1947).

every stage, the steel nationalization bill receiving approval in the Commons by six votes only.

The end of the Liberal party. It may be noted that the 1950 election was the occasion for the last great effort by the Liberals to stage a comeback as a major political party. It was felt that many people were tired of austerity and even many Laborites were dissatisfied with the nationalization program. The Liberals hoped that they could attract many votes from both Labor and the Conservatives. They nominated 475 candidates, despite the fact that in many constituencies they had virtually no organization at all. The results were disastrous to their hopes. They won but nine seats instead of the twelve they had had in the previous House, even though their scattered voting strength totaled 2,621,489 out of 28,769,477 votes cast.¹⁰

The election of 1951. The general election of October, 1951, produced something very close to a stalemate. The Conservatives polled about 1,200,000 votes more than they had the previous year, but this merely brought them close to equality with the Labor party. Labor actually gained votes too (13,949,000 in 1951 as compared with 13,296,000 in 1950). The Liberal vote all but disappeared. Evidently former Liberals were now voting for Conservative or Labor candidates, with the former receiving the lion's share of the ballots. Although the total Labor vote was 218,000 larger than the Conservative, the latter party, with better distribution of strength, won twenty-six more seats. Just as the Conservatives in 1950 had threatened to undo the nationalization of steel as soon as possible, so the Labor party now threatened to renationalize it as soon as they were again in power. Fortunately there has been little conflict in the area of foreign affairs, although the Labor party has been threatened with an internal split on this issue. But in domestic matters the near-stalemate has militated against an orderly and consistent program. By unremitting alertness the Conservative whips have managed to keep their tiny majority workable, but the government has had to proceed slowly in carrying out its pledges to undo some of the socialism of the previous regime. The two-party system works best when the majority party has a sufficient preponderance not only in parliament but also among the electorate to feel confident of a mandate to carry out its policies. The British general election of 1951 produced a government without such a mandate.

General History. Strange to say, there is no comprehensive history of English political parties from their origin to the present day, and no comprehensive treatise which describes the English party system as such. The nearest approaches

¹⁰Liberal voting strength had been declining steadily since 1929, when there were fifty-nine Liberals in the House of Commons. In 1931 they had thirty-three seats, and in 1935, twenty. The bottom was reached in 1951 with six lonely Liberals in the House. These were mainly from Welsh districts where the Liberals have long had their solid core of loyal partisans.

to an adequate description are the ones given in the first volume of M. Ostrogorski's *Democracy and the Organization of Political Parties* (revised edition, 2 vols., New York 1922), and in the chapters on the subject in A. L. Lowell's *Government of England* (2 vols., New York, 1908). A sixty-page survey may be found in F. A. Ogg, *English Government and Politics* (2nd edition, New York, 1936), chaps. xx-xxii.

By Periods and by Parties. For various periods, however, and for the individual parties there are books in abundance. Among these are Keith Feiling, *History of the Tory Party, 1640-1714* (London, 1924); T. E. Kebble, *A History of Toryism* (London, 1886); N. Birch, *The Conservative Party* (London, 1949); W. Harris, *History of the Radical Party in Parliament* (London, 1885); Maurice Woods, *History of the Tory Party in the Seventeenth and Eighteenth Centuries* (London, 1924); F. H. O'Donnell, *History of the Irish Parliamentary Party* (2 vols., London, 1910); Carl F. Brand, *British Labour's Rise to Power* (Stanford Univ. Press, 1941); Max Beer, *A History of British Socialism* (London, 1940); H. Fyfe, *The British Liberal Party: An Historical Sketch* (London, 1928); W. G. Hall, *The Labour Party* (London, 1949); Sir Henry Slessor, *History of the Liberal Party* (London, 1944); R. J. Cruikshank, *The Liberal Party* (London, 1948); and W. L. Blease, *A Short History of English Liberalism* (New York, 1913). Tom Bell, *The British Communist Party: A Short History* (London, 1937), should also be mentioned. Party history in the nineteenth century is well covered in K. B. Smellie, *A Hundred Years of British Government* (London, 1937), and more detailed information on various aspects of this period will be found in H. W. C. Davies, *The Age of Grey and Peel* (Oxford, 1929); Norman Gash, *Politics in the Age of Peel: A Study in the Technique of Parliamentary Representation* (New York, 1953); S. Maccoby, *English Radicalism* (2 vols., London, 1935 and 1938); R. L. Hill, *Toryism and the People, 1832-46* (London, 1929); and W. E. Williams, *The Rise of Gladstone to the Leadership of the Liberal Party* (London, 1934).

Party Programs. On the traditional policies of the various parties there are numerous volumes (partly historical) among which may be mentioned: F. J. C. Hearnshaw, *Conservatism in England* (London, 1933); C. F. G. Masterman, *The New Liberalism* (London, 1921); Dean E. McHenry, *His Majesty's Opposition: Structure and Problems of the British Labour Party* (University of California Press, 1940); E. R. Pike, *Political Parties and Policies* (London, 1949); Aubrey Jones, *The Pendulum of Politics* (London, 1946); and H. B. Lees-Smith, *Encyclopedia of the Labour Movement* (8 vols., London, 1927). Recent books giving an outline of party history and an apology for current policies are John Parker, *Labour Marches On* (London, 1947), and Quentin Hogg, *The Case for Conservatism* (London, 1947). Mention may also be made of Sydney D. Bailey, Ed., *Political Parties and the Party System in Britain: A Symposium* (New York, 1952); and Ivor Bulmer-Thomas, *The Party System in Great Britain* (London, 1953).

On the relation of the two-party system to ministerial responsibility there are discussions in G. M. Trevelyan, *The Two-Party System in English Political History* (Oxford, 1926), and in Ramsay Muir's volume on *How Britain is Governed* (4th edition, London, 1939), as well as in R. Bassett's *Essentials of Parliamentary Democracy* (New York, 1935).

See also the references at the close of Chapter XVI.

CHAPTER XVI

English Political Parties: Organization, Programs, and Methods

*That these two parties still divide the world—
Of those that want, and those that have; and still
The same old sore breaks out from age to age,
With much the same result.—Tennyson*

What the British political parties stand for. What do the three British political parties stand for? Or, more accurately, what do they profess to stand for? From what geographical sections of the kingdom and from what elements of the population do they draw their principal support? With what machinery do they seek to get themselves into power?

Before attempting to answer these questions it may be well to point out that the First World War marked a serious break in the continuity of party evolution. During this conflict the parties adjourned their rivalries and began the practice of forming coalition governments. This practice, in form or in fact, has been intermittently continued ever since. Shortly after this war, moreover, the Irish Nationalists departed from the House, the Liberal party went into eclipse, and Labor came to the front as a major party in British politics. These departures from the old order serve to designate the years 1914-1918 as a significant turning-point in the evolution of the British party system. It seems desirable, therefore, to speak first of party structure before that time and then to explain the changes that have been wrought during the past couple of decades.

The confusion of party designations throughout Europe. A word of admonition may also be advisable in connection with party designations. In virtually all English-speaking countries the nomenclature of political parties is more likely to mislead than to enlighten. We know full well that in the United States the Republicans are not a whit more “republican” than the Democrats, and that Democrats (in the Southern States particularly) are not

necessarily more "democratic" than Republicans. To say that Republicans believe in a republican form of government while Democrats believe in democracy would be a simpleton's way of differentiating American political parties. The names of American political parties tell us nothing about their principles or programs.

Liberals and Conservatives. So, in Great Britain, the Conservatives have not always been conservative, nor have the Liberals always been liberal in their attitude toward public questions. The Conservatives have sometimes championed reform with the Liberals opposing them. Within the ranks of both these parties there have always been many shades of opinion. In general, of course, men and women who are conservative in temperament incline toward the Conservative party, and people of liberal views have traditionally gravitated into the ranks of the Liberal or the Labor party; but the exceptions to this tendency run into the millions.

Generalizations as to what "a party stands for" are virtually impossible to make—if one has a care for accuracy. Usually a political party stands, first of all, for getting itself into office and keeping itself there. It stands for itself and its friends. It may stand for one thing in opposition, and for something quite different when in power. Thus it comes to pass that although there may seem to be a good deal of difference between the respective programs of the "ins" and the "outs," there are seldom any drastic reversals of policy when the one party gives way to the other. The advent of the British Labor party to power in 1945 is a striking exception to this rule.

THE CONSERVATIVES

Conservatives have sometimes been reformers. There have been times when the Conservative party has justified its name, but no one with a knowledge of English political history would contend that it has always been the party of reaction, or of obstruction to progress. Under the leadership of Peel and Disraeli it was militantly progressive, like the Republican party in the United States under the leadership of the first Roosevelt and the Democratic party under the second. If you make a list of the various reform acts which parliament has passed during the past 100 years you will find that a very substantial fraction of them were introduced by Conservative ministers. The Conservatives are reformers, said one of their leaders, but "cautious and circumspect reformers."¹ That, perhaps, is another way of saying that they have been reformers when they had to be.

Sources of Conservative strength nowadays. The personnel of the Conservative party inevitably compels it to be cautious and circumspect. Tradition-

¹ Lord Hugh Cecil, *Conservatism* (London, 1912), p. 9.

ally it has included in its membership most of the nobility and the country squires, most clergymen of the Established Church (the parson vote, as it is called), and many ardent churchmen among the laity. It has been strong in rural England, especially in the southern counties. It has had in its ranks most of the barristers (lawyers), the bankers and brokers, the officials of large corporations, the ardent imperialists, the pro-tariff groups, and the officers of the armed services. Likewise it has drawn heavily upon the prosperous merchant class.

Until recent years, moreover, most university graduates have gravitated into the Conservative ranks. From 1885 to 1918 not a single Liberal member was elected to the House of Commons from any of the British universities. This does not mean, of course, that a university education tends to take the liberalism out of a young man, whether in England or elsewhere. It is merely that the British universities, before the First World War, drew their students, for the most part, from homes which were traditionally Conservative in their political allegiance. It has sometimes been remarked, however, that many Oxford and Cambridge men who joined the Labor party or the Liberal party as undergraduates seemed to be drawn into the Conservative ranks when they grew older and acquired social prominence. The fact seems to be that a university man's political leanings are not determined by the enlightenment (if any) which he derives from the curriculum but are largely influenced by two things, namely, the political affiliation of his parents and the position in life which he acquires after graduation.

Its appeal to "the interests." The Conservative party has naturally made a strong appeal to what American politicians designate as "the interests," that is, the industrial corporations, the big income taxpayers, and the liquor trade or "the beerage," as this interest is jocularly called. It has also drawn some support from the British "middle class," including the small manufacturers, tradesmen, and shopkeepers, although these classes were mainly mobilized in the ranks of Liberalism during the nineteenth century and in the twentieth have gravitated, to some extent, into the Labor party. This term "middle class," by the way, although it has figured on almost every page of political discussion in England, does not lend itself to easy definition. One writer has defined it as "that portion of the community to which money is the primary condition and the primary instrument of life."² Whatever else may be said about this definition, it has at least the merit of indefiniteness. Applied to the United States it would not leave much of the population outside its scope. Finally, until the rise of the Labor party, the Conservatives drew into their ranks a considerable quota of wage-earners in the cities, and agricultural

² R. H. Gretton, *The English Middle Class* (London, 1917), p. 8.

laborers in the rural districts. In a word, the Conservative party draws from several elements in the British electorate, but its strength is for the most part, and quite naturally, in the dwindling upper ranks of the social and economic scale.

THE LIBERALS

English Liberalism. Traditionally the Liberals were the party of political reform, free trade, and laissez-faire. While some Liberals still profess their belief in free trade, the Liberal party has discarded its allegiance both to that doctrine and to the policy of let-alone. Liberals no longer incline to the old view that free competition will work out a remedy for a nation's ills. They do not balk at protecting the worker by a minimum wage and social insurance. One of the reasons for the decline of the Liberal party during the past thirty years can be found in its lack of a forthright and distinctive program. It has fallen between the two stools of Labor and Conservatism. Like the Labor party, it favors the welfare state, as do many Conservatives, and like the latter, it opposes state capitalism. Much former Left-Liberal strength has gone to Labor, while the old-style Gladstonian Liberals have tended to join the Conservatives as offering a better chance of victory for their ideas.

It should be noted, incidentally, that the parliamentary strength of the Liberals is much smaller than their voting strength because of the effect of the single member district (plurality) system. It takes, on the average, vastly more popular votes to elect a Liberal than a Labor or Conservative candidate.³ For this reason the Liberal party is now a strong advocate of proportional representation. In the general election of 1945 it elected only twelve members of parliament; in 1950, although by a major effort it nominated 478 candidates, only nine emerged victorious; and, as noted above, only six were elected in 1951. Altogether it seems more than doubtful that the Liberal party can hope to regain its place as a major political force in British politics.

THE LABOR PARTY

Sources from which the Labor party recruits its strength. The backbone of this party's membership comes from the labor organizations, or trade unions, as they are called in Great Britain. The party now includes in its ranks most of the unionized workers of Great Britain. It has also absorbed virtually all those who call themselves Socialists, and indeed the party's program has become frankly socialist in many of its main features. Likewise the Labor party

³ In 1950, 2,621,489 Liberal votes elected only nine candidates. This is about 291,276 votes per candidate. It took only 4,229 votes to elect a Labor M.P. and only 5,000 to elect a Conservative. Of the 478 Liberal candidates, 319 forfeited their £150 deposit. Fortunately for the party treasury, blanket insurance against such a tragedy had been taken with Lloyds.

has made a considerable draft upon professional men, intellectuals, government employees, even a few capitalists and peers. Its appeal to the women voters has been surprisingly strong. It has a considerable following among the younger generation, and in the election of 1945 obtained a large vote from men who were still in the armed forces. It also draws heavily from the membership of the coöperative societies, which boast some 10,000,000 members.

Now although the Labor party draws the bulk of its support from the trade unions, one must not assume that its ranks are solid. On the contrary, it is rather sharply divided into two groups, one veering generally to the Right and other to the Left. The latter group includes some "fellow travelers" of the Communist party line; how many it is not easy to estimate. But thus far the party leaders have managed to hold these two divergent groups together, although on more than one occasion their more radical followers in the House of Commons have voted against the government—in 1947 for example, on a measure for peace-time conscription.

Party lines and geography. In Great Britain, as in the United States, party allegiance is to some extent a matter of geography. In the old days Scotland and Wales usually went Liberal. But the Labor party has now acquired strength in the industrial areas of both these countries.⁴ Northern Ireland (Ulster) has always been stanchly Conservative, or Unionist, as it still prefers to be called. In England itself there are areas with strongly Conservative tendencies and others just as consistently Labor. In a general way the north of England and the midlands are inclined to support Labor candidates, while the south and east have been traditional strongholds of Conservatism. To any such generalization, however, there are numerous local exceptions, and one cannot say that there is a "Solid South" anywhere in Britain as there is in the United States. Areas in which mining and manufacturing employ large bodies of workers tend to support the Labor party, while in the fertile agricultural regions the Conservatives have usually had the advantage.

The danger of generalizing on British parties. Now the foregoing paragraphs will mislead the reader if he insists on construing them literally. There is hardly a single rule of British party politics that is not open to important qualifications. "Tell me how a man earns his living and I will tell you how he votes" is a stock saying in England; but like many other aphorisms of practical politics this one seems to be a rule with innumerable exceptions. Neither the Conservatives, the Laborites, nor the Liberals have had a monopoly of the voters in any walk of life. It must not be taken for granted that because a man is a peer, or a bishop, or a banker he is necessarily a Conservative. There

⁴ Wales remains more Liberal than any other area. Of the nine Liberals elected in February, 1950, five were returned by Welsh constituencies.

are peers, bishops, and bankers (some very prominent ones) in the ranks of the Labor party. On the other hand, you will encounter some Conservatives in overalls, with dinner pails in their hands.

Regulars and nonregulars in the party ranks. A political party, like an old-time army, is made up of regulars, auxiliaries, volunteers, mercenaries, and camp followers. All but the regulars are liable to desert, in whole or in part, on occasions. The percentage of these "regulars" in the party strength is probably not so large in Britain as in the United States. One reason for this is the fact that in Great Britain the general elections do not usually turn on appeals to partisan loyalty but on fairly concrete and definite proposals—such as the nationalization of major industries in the general election of 1945. This is a consequence of the British scheme of ministerial responsibility which usually causes a general election to synchronize with the clash of political parties on some outstanding issue. In the United States, when the time for an election arrives, it often happens that there is no major issue engaging the public attention. The party leaders have to rustle around and find one.

Looseness of party lines in Britain. In England this is not the case, or, at any rate, not as a general rule. For in England it is the issue that usually brings on the election. Until parliament has run its full five-year term there is no general election unless some great issue arises and makes an election necessary to settle it. Then, if need be, there may be three general elections in three years, as was the case during 1922-1924. As a result of this difference the party lines are less firmly drawn in Great Britain than they usually have been in America. The way an Englishman votes is to a large extent determined by his own attitude toward the immediate problem which has made the election necessary. Party allegiance does not count for as much in Hampshire as it does in New Hampshire. This is shown by the huge overturns which take place at English elections, even within a very short space of time.

All British parties agree on the main principles of foreign and colonial policy. Between the three English parties today there is a general agreement on certain fundamentals. All three favor the continuance of the monarchy. This is true even of the Labor party, as an organization, although some of its left-wing members feel differently. Alike, all three parties accept the Commonwealth of Nations as an aggregation to be defended and preserved. There was a time when it could be fairly said that the Conservatives were more imperialistic than either the Liberals or members of the Labor party, more belligerent in their foreign policy, and more ardent in extending the far-flung range of British power. This was notably the case during the Disraeli-Gladstone duel of eighty years ago. But during the first three or four decades of the present century these differences tended to fade away. In

two great wars and an intervening economic depression the need for unity caused at least a partial adjournment of political controversies, especially during the time when coalition cabinets were in office. Since 1945, however, the cleavage between Conservatism and Labor in both overseas relations and domestic policy has become wide and definite. The Labor government's decision to give India a status of full independence was vigorously opposed by the Conservatives. Likewise the latter have cast their votes in the House of Commons against the successive steps in the Labor program of industrial nationalization. At the present time, British politics have reverted to the dual party system, with a clear alignment of Right against Left, and of more free enterprise versus more socialization.

The Irish issue is closed for the moment. For many years the Irish question tinctured every British election campaign with animosity and bitterness. But all parties accepted the virtually complete independence which Eire (Southern Ireland) has achieved as an outcome of the Statute of Westminster. The Irish Republic is no longer a member of the Commonwealth of Nations or a part of the British Empire. For the moment, therefore, "the Irish question" has ceased to roil British political waters, but it probably will do so again, and perhaps soon, on the issue of forcing Northern Ireland (Ulster) into a union with Eire. The demand for a united Ireland is gaining strength in the south of the green island, even though it means forcing the industrial north into the union against the will of a majority of its people.

So it would be rash to assume that the Irish question has been given its quietus for all time. Strongbow settled it 800 years ago, or thought he did. Oliver Cromwell also solved it to his own satisfaction, and so did the younger Pitt. Gladstone spent a considerable part of his public life trying to put it out of the way, but never succeeded. Then the resourceful Lloyd George tried his hand at it. He brought the Irish Free State into being, and this gradually developed into the independent Irish Republic, which is a status far beyond the wildest dreams of those who agitated for Irish "home rule" a half century ago. Whether the Irish question will once more become a stormy petrel of British politics is something that the future will have to determine.

Labor's "Socialist Commonwealth." The British Labor Party, when it went into the election campaign of 1945, pledged the establishment of a "socialist commonwealth" in Great Britain. Its program called for a far more radical reconstruction of the social and economic order than either of the older parties had ever contemplated. Moreover, it promised to effect this reconstruction rapidly, and not by any process of "gradualism" as the right-wing element of the party had proposed in earlier days. While expecting to establish a socialist state by nonviolent methods, the spokesmen for the Labor party have made it

plain that there will be no compromise with capitalism in achieving the end. More specifically, the Labor government took into public ownership some of Britain's basic or key industries and services. These included coal, water supply, electric light and power, the railroads and other means of transport including civil aviation, together with the nation's banking and credit facilities. The party conference of 1953, however, adopted resolutions indicating that no extension of socialization into new fields is planned for the immediate future.

ORGANIZATION AND ACTIVITIES

Party organization. The history, composition, and programs of the three major political parties in England having been briefly surveyed, it is worth while to add a word concerning their methods of organization and their activities in election campaigns. English political parties place a good deal of stress upon organization, although by no means so much as is the custom in America. Comparing England and America in this respect one might say that in England leadership counts for more and organization for less than in the United States.

Early methods. English party organization in the country at large, as distinguished from party organization in parliament, dates from the Great Reform Act. Prior to 1832, when the privilege of voting was confined to a very small percentage of the people, when the process of electing a member was so often a mere gesture, there was no need for party organizations among the voters. With the widening of the suffrage, however, and the elimination of the pocket boroughs, it became apparent to the political leaders that success or failure at the polls depended on getting the new voters registered and canvassed. So registration societies were formed all over the kingdom and these gradually developed into full-fledged local party organizations. At the outset the local organizations did not attempt, save in rare instances, to place candidates in nomination. This was left to individual initiative; in other words, the candidates came forward of their own volition or were nominated by a few influential members of the party.

The Birmingham plan. In the course of time, however, the local organizations began to broaden their bounds so as to include all members of the party in the ward, or borough, or county. This step was first taken by the Liberals in Birmingham during the sixties. There the Liberals of each ward adopted the practice of assembling in caucus and choosing a ward committee which, in time, sent delegates to a central association for the whole city. The general committee of this central association, representing as it did the whole body of Liberal voters in Birmingham, took over the function of dominating the Liberal candidates and promoting their election. In short, the Birmingham

Liberals merely adopted the ward caucus and the city convention, thus taking a leaf from the book of practical politics in America.⁵

Its spread. The Birmingham plan of party organization proved to be a brilliant success. The Liberals, organized on the American plan, not only swept their entire slate of three candidates into the House of Commons but captured the city council as well. Naturally this achievement was noted by the Liberals in other cities, and by their Conservative opponents also. Before long, therefore, the Birmingham plan spread over most of England. It did not do this without opposition, however, for many timid-minded leaders in both parties were afraid that it would transplant to Great Britain "all the evils of American machine politics." In this they proved to be mistaken. The use of the caucus and convention in England did not result in the domination of the cities by rings and bosses. Anyhow, when the Liberals adopted this method of organization they left the Conservatives no choice but to accept it also, as a matter of self-defense.

The National Conservative Union and The National Liberal Federation. The next step followed logically within a short time. This was the affiliation of the local organizations into a national body. One party organized the National Conservative Union and the other the National Liberal Federation. It was not intended that these national bodies should exercise any control over the local associations or dictate the nominations made by the latter. The avowed purpose was to guide, assist, and inspire the local organizations so that their work might be made more effective. But both national bodies inevitably became directing factors in the work of their respective parties. Each set up a central office with a paid staff, and these headquarters kept in close touch with the local associations everywhere. Sets of rules and instructions were prepared for the guidance of the local committees, and the local associations were sometimes provided with paid organizers. On the approach of an election campaign the central offices took over the work of raising funds for nation-wide use; they supplied speakers where they were most needed; they even adopted the practice of recommending a candidate in any constituency where no strong local man appeared to be available.

The practice of "recommending" local candidates. The habit of "recommending" an outsider (usually some one who had worked for the national headquarters in a previous campaign) was not resented by the local organizations. On the contrary, they often asked that a good candidate be recommended to them—preferably one able to conduct a whirlwind campaign

⁵ The moving spirit in this procedure was Joseph Chamberlain, who was commonly known as the "American mayor" of Birmingham by reason of his having made this office a real center of influence and authority. Chamberlain was very familiar with American party organization and methods, having spent considerable time in the United States. His son, Neville Chamberlain, was prime minister of Great Britain from 1937 to 1940.

and pay for it out of his own pocket. The practice still continues in Great Britain, and not a few parliamentarians have made their way into the House of Commons during the past fifty years by grace of a central recommendation to some fighting-chance constituency in which no local man seemed willing to give battle for the party and pay the price. By this and other means, at any rate, the influence of the central organizations continued to grow apace, and eventually two small groups of party leaders in London were exerting a strong influence upon the work of the local associations everywhere.

Strictly speaking, the supreme authority in the Conservative party is the Conservative conference which is composed of delegates from the local organizations. The Labor party also has its well-organized national conference. Unlike the national party conventions in the United States, these British national party conferences meet every year (not once in four years), and they neither nominate candidates nor adopt official platforms. Their main purpose is to elect certain party officials and committees, to provide an opportunity for key-note speeches, and to promote party morale. The leader of each political party in Britain the party members in the House of Commons, not by any conference or convention as in the United States.

Difference between the theory and practice of party organization. Everywhere and always there is a good deal of sham in the make-up of party organizations. This is equally true of Britain and the United States. Ostensibly, in both countries, the local committees are chosen by the voters of the party, every voter having a voice in the matter. Ostensibly, also, the party leaders are chosen by the committees and are responsible to them. But the fact is that in both countries, under normal conditions, party committees are self-chosen, self-perpetuating, and not really responsible to anyone. The voters, in nine cases out of ten, merely assent to what has been decided for them by the party activists. The chief difference between British and American procedure (in the case of local committees) is that in the one case this assent is given at a caucus while in the other it is usually given at a primary.⁶

Organization of the Labor party. The Labor party has not failed to learn that thorough organization is the key to victory at the polls. In each constituency there is a Labor association which "all producers by hand or brain" are eligible to join. Many of these local associations depend chiefly upon the votes of trades unionists, but the principal activists are likely to be nonunionist intellectuals, frequently more doctrinaire socialist than the bulk of the union members. There is, as has been said, an annual national Labor conference. It is attended by delegates from affiliated trades union organizations, coopera-

⁶ A caucus is a meeting in which the party voters all come together at the same time. A primary is, as its name implies, a preliminary election; the voters come to it singly, not *en masse*. A caucus affords opportunity for discussion before voting; a primary does not.

tive societies, and socialist groups.⁷ To a greater extent than the national conferences of the other parties, the Labor conference formulates the party program. It elects the party secretary who heads its central office and is very influential in its affairs. At the same time it should be noted that the National Executive Committee, elected at the national conference, although it has general control of the party, cannot always control the Labor members of parliament. The latter have their own organization, called the Parliamentary Labor party. They elect their leader who will be either prime minister or leader of the Opposition, and elect as well their executive committee who occupy the "front bench" and who normally will be cabinet ministers when the party is in power. The Parliamentary Labor party is not always in accord with the National Executive Committee. In 1952, for instance, the left-wing "constituency parties" gave six of their seven seats on the twenty-seven man Executive Committee to Aneurin Bevan and his followers. In the same year Mr. Bevan himself was barely able to secure the last place on the twelve-man parliamentary committee.

The Labor party's national conference should not be confused with the Trades Union Congress which also meets each year and is composed exclusively of delegates from the unions. Naturally the two organizations usually work in harmony, although the national conference is likely to be more socialist than the TUC.

The Labor party likewise maintains a central office in London, and from this office directs the party activities throughout the country. Of late years it has established and maintains regional organizations as well. It recommends candidates like the other parties, provides speakers, apportions funds, distributes campaign literature, helps to support the party newspapers, and does most of the work that is performed by a national party headquarters in the United States during a presidential campaign. All in all, the British Labor party is well organized—better, perhaps, than the Conservatives.

The auxiliary organizations. Much work in the interest of all the parties is performed by auxiliary organizations. The Primrose League, for example, has long been an active propagandist body in the interest of the Conservative party.⁸ The same is true of the Carlton Club in London. There is a National Liberal Club, a National Reform Union, and a National League of Young Liberals, but these are not so influential as they used to be. The Fabian Society,

⁷ The 1952 conference was attended by delegates from eighty-three unions, 660 constituency parties, and five socialist or cooperative societies. National and constituency organizations have one vote per thousand members. This meeting elects the National Executive Committee consisting of a chairman and twenty-six other members as follows: twelve by the unions, seven by the constituency parties, five women (by the whole conference), a treasurer (by the whole conference), and one member by the socialist, cooperative, and professional societies.

⁸ This league was named in honor of the Conservative leader, Disraeli, whose favorite flower was the primrose.

as every reader of socialist literature knows, has rendered great service to the Labor cause. A National Labor Club serves as the party's chief social center in London. Other political clubs, leagues, and societies by the hundred are active in all parts of the kingdom. Many of them are primarily social organizations until an election looms on the horizon. Then they plunge into politics until the polls are closed.

English and American analogies. It will be seen, therefore, that English and American party organizations have much in common. Both stand in sharp contrast with the traditional forms and practices of party organization in European Continental countries. In both England and America there is a hierarchy of committees, local and national, the latter helping and encouraging (but not openly controlling) the work of the former. In both countries there are hundreds of leagues, societies, unions, and clubs, which are active in furthering the party cause. In both countries the activities and expenditures of political parties must keep within the bounds laid down by law. The chief difference is that England has fewer professional politicians than the United States, fewer men and women who spend all or most of their time working in the party interest and who expect to be paid for it in some way or other. There are political organizations in England, but no political machines, that is, no organizations which function with the machine-like precision of Tammany Hall. There are no rings or bosses in English cities or counties as in America. On the other hand, there are men who virtually dominate the party organization in individual boroughs, especially the local organizations of the Labor party, and sometimes they come close to being local bosses.

Changes due to the rise of the Labor party. The Labor party has done a good deal to Americanize the politics of Great Britain during the past dozen years. It has taught English politicians the value of strict discipline in the party ranks. It tolerates no insurgency. Those who go before the voters as Labor candidates must get the endorsement of the party's national executive. Finally, the Labor party has brought into Great Britain a more democratic method of raising campaign funds. It has not depended for sustenance upon a few rich men but has combed the party ranks for small contributions.⁹

Labor and the unions—current problems. Since its founding in 1900 at a meeting called by the Trades Union Congress, the Labor party, as noted earlier, has relied chiefly upon union members for its upport. At the time of its founding only a few leaders such as Keir Hardie were Socialists, but these few, aided by the intellectuals of the Fabian Society, slowly transformed the party into a gradualist socialist movement. In recent years one of the party's problems has been to retain the disciplined loyalty of union members while

⁹ On the other hand, members of trades unions who do not approve of the Labor party complain that part of their union dues goes to support that party despite their personal views.

their own government has had to sponsor an "austerity" program including frozen wage levels.

The other chief problem has had to do with the left-wing followers of the dynamic and combative Aneurin ("Nye") Bevan who have challenged the official leadership on a number of issues of both foreign and domestic policy. This left wing, although it has some trades union support, has much greater strength among the intransigent groups. Control of the party by its left wing might mean a serious drop in the Labor vote.

In addition to the books listed at the close of Chapter XV, mention should be made of R. S. Watson, *The National Liberal Federation* (London, 1907); W. Elliott, *Toryism in the Twentieth Century* (London, 1927); J. M. Gaus, *Great Britain: A Study in Civic Loyalty* (Chicago, 1929), especially chap. vi; Edward Pease, *History of the Fabian Society* (2nd edition, London, 1925); H. Tracey, *The Book of the Labour Party* (2 vols., London, 1925); M. Beer, *History of British Socialism* (New York, 1942); Clement R. Attlee, *Labour's Aim in War and Peace* (New York, 1941); and by the same author, *As It Happened* (New York, 1954).

Party methods and activities are also discussed, more or less, in J. A. Spender, *The Public Life* (2 vols., London, 1927); E. Benn, *If I Were a Labour Leader* (London, 1926); P. G. Cambray, *The Game of Politics* (London, 1932); G. D. H. Cole, *British Working Class Politics* (London, 1941); the same author's *Fabian Socialism* (London, 1943); his *History of the Labour Party from 1914* (London, 1948); Aubrey Jones, *The Pendulum of Politics* (London, 1946); Frank Gray, *The Confessions of a Candidate* (London, 1925); Michael Farbman, editor, *Political Britain: Politics and Politicians* (London, 1929); F. S. Oliver, *Politics and Politicians* (London, 1934); E. R. Pike, *Political Parties and Politics* (London, 1934); George Lansbury, *Labour's Way with the Commonwealth* (London, 1935); Francis Williams, *Fifty Years March: the Rise of the Labour Party* (London, 1950); Sir Austen Chamberlain, *Politics from the Inside* (New Haven, 1937); C. S. Emden, *The People and the Constitution* (Oxford, 1933); G. D. H. Cole and Raymond Postgate, *The British Common People, 1746-1938* (New York, 1939); J. K. Pollock, *Money and Politics Abroad* (New York, 1932); together with the manuals which are periodically issued by the central organizations of the parties themselves.

A great deal of scattered but very illuminating material on party organization and methods may be found in the biographies or biographical sketches of such leading British statesmen as Disraeli, Gladstone, Salisbury, Parnell, Lord Rosebery, Campbell-Bannerman, Lord Randolph Churchill, Joseph Chamberlain, Balfour, Asquith, Lord Curzon, Lord Bryce, Lloyd George, Stanley Baldwin, Ramsay MacDonald, Austen Chamberlain, and Winston Churchill.

CHAPTER XVII

Law and the Courts

Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued until it is obtained, or until liberty is lost in the pursuit.—James Madison

Two great legal systems. In the history of mankind there have been many systems of law, but only two have proved to be great and outstanding, namely, the civil law of Rome and the common law of England. Other systems have come into existence during the centuries, and some of them (such as Mohammedan law) remain in operation today, but it is not too much to say that the legal fabric of practically all free nations is derived from one or the other of these two great bodies of jurisprudence. The countries of Continental Europe, the Latin-American republics, South Africa, Japan, and even Scotland, have followed the civil law of Rome; while England, Ireland, the United States, and the British overseas dominions have based their legal systems upon the common law.¹ Thus one can travel over most of the world today without setting foot upon soil that does not render homage to the jurisprudence of England or of Rome. Roman and Saxon differed in many things, but one thing they had in common, a genius for government and law. *Regere imperio populos . . . pacisque imponere morem.*²

A general comparison. These two great systems of law, Roman and common, are absolutely unlike, as anyone who undertakes a study of them will soon discover. The Roman law was developed by a people who, although intensely practical as ancient races went, had a strong penchant for order, symmetry, and uniformity. So they developed a legal system which was above all things coherent and orderly, each part consistent with every other

¹ In French Canada there is a strong infusion of Roman Law; and the same is true of Louisiana which was colonized by the French. There is a good chapter on "The Spread of Roman and English Law throughout the World" in Lord Bryce, *Studies in History and Jurisprudence* (London, 1901).

² "To rule the people with authority . . . and to teach men the way of peace." Virgil's *Aeneid*, Book VI, 847.

part. The mediaeval Englishman was also endowed with a practical turn of mind, but he inclined much less to logic or consistency. He left his legal system full of knots and kinks and loopholes, or, as lawyers would say, "replete with anomalies and incongruities." The Roman legal system is polished, balanced, rounded, and stabilized, while the common law was (and still is) rough at the edges, unsystematic, casual, and ever changing like the colors of an English sunset.

Order and progress. In a way, therefore, these two systems of law are an elaboration of the words "order" and "progress," which prefigure two types of national genius. It has sometimes been said that Roman law is like Romanesque architecture in that its impressiveness arises from the proportions of the mass, while the common law is like Gothic architecture, its beauty arising from the variety and perfection of the details. Whether this simile is worth much I cannot say, nor are there many who can, for few men are proficient in both architecture and law. But as to the variety and intricacy of detail in the common law any American lawyer can testify. Therein lies its strength—also its exasperation. In other words the common law is not a code like the laws of Solon, or the Twelve Tables, but an organism every molecule of which is undergoing ceaseless decay, renewal, or alteration.

The common law of England. What is this common law, about which Blackstone wrote in rhapsody as "the best birthright, the noblest inheritance of mankind"? What is the basis of the old saying that "common law is common sense"? In 1774 the First Continental Congress, meeting in Philadelphia, asserted that Americans were entitled to their common law "by the immutable laws of nature." Why did these sturdy colonials, on the verge of a revolt against England, lay claim to such a heritage? The answer, however brief it be, must carry us a long way back into English legal history.

Its origin and early growth. Even prior to the Norman conquest in 1066 certain legal customs and usages had become *common* to the whole realm of England, or, at any rate, to a large part of it. But these unwritten usages were relatively few in number and they were not always clear. From time to time, therefore, they were elucidated or declared by the dooms or ordinances which the king issued at sessions of his Witan. With the arrival of the Normans, and the strengthening of the royal authority, these nation-wide or common usages steadily increased until in time they became both numerous and complicated. When a case came before the royal justices, these judges tried to ascertain the common custom and to apply it. The decision of one judge was then followed by others, because that was the easiest thing to do, and in this way precedents and the doctrine of *stare decisis* ("let the rule stand") were involved. Thus there grew up, especially under the early Plantagenet kings, a

body of rules which had never been ordained by any monarch or enacted by any legislative body, but which merely represented the crystallization of usages or customs. Nevertheless they were applied with the force of law by the king's judges wherever they went.³

The commentators: Glanvil to Blackstone. Then came the next step. Commentators began to take this steadily growing and somewhat elusive body of rules in hand. They arranged them in logical form, elucidated them, added their own comments, and thus gave the common law a better basis for further development. Ranulf Glanvil was the first of these common-law expounders. In the twelfth century he compiled his famous *Tractatus de Legibus et Consuetudinibus Regni Angliae*,⁴ a remarkable treatise when one takes into account the difficulties which this pioneer compiler had to overcome. Other jurists continued Glanvil's work. Bracton, about the middle of the thirteenth century, edited a larger commentary with numerous citations from the decisions of the royal courts. Then, as the centuries passed, came Littleton, Fitzherbert, Hale, Coke (pronounced Cook), and, finally, the best known of them all, Sir William Blackstone, whose *Commentaries on the Laws of England* appeared on the eve of the American Revolution.⁵

Common law is judge-made law. These men were expounders, not makers of the law. They explained the law as it was at the time of writing. Meanwhile the common law kept broadening down from precedent to precedent. It grew by decision and by record, not by enactment. Year after year the decisions of the courts fitted it to new needs and conditions. But it ceased to be *unwritten* law in a strict sense, for its rules and usages, as they grew, were put into written form by the succession of jurists named above. It was unwritten law only in the sense that it did not originate in statutes passed by parliament. It was customary law in that usages supplied its basis. It was judge-made law in that the courts had evolved most of it.

Its migration to America. Age gives dignity to law as to institutions. The people of England gloried in their common law; they regarded it as a shield and buckler against royal oppression, which in truth it was. For had it not been the people's law so far back that "the memory of man runneth not to the contrary"? So when Englishmen migrated to America in the seventeenth century they brought the common law with them just as they brought the English

³ See Sir Frederick Pollock's *Expansion of the Common Law* (London, 1904), pp. 46-50; also F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915); Edward Jenks, *A Short History of English Law from Earliest Times to 1933* (London, 1934); Harold Potter, *Historical Introduction to English Law and Its Institutions* (3rd edition, London, 1949); and W. A. Robson, *Civilization and the Growth of Law* (New York, 1935).

⁴ It is the belief of some authorities that the *Tractatus* was not entirely the work of Glanvil but partly that of his nephew, Hubert Walter.

⁵ During the past 175 years the *Commentaries* have passed through numberless editions. No other law book is so widely known throughout the English-speaking world.

language. To the colonist it was the basis of his personal liberties, a body of fundamental law which could not be changed at the caprice of kings or parliament.⁶ Hence the colonist guarded it as jealously as his flag, and it was the first system of law applied by his courts in the new world. Gaining good root beyond the seas it survived the Revolution, and in forty-seven states of the Union the courts are administering it today. What an astonishing survival! Take for example the rule that a father is under legal obligation to provide his minor children with the necessities of life. When and by whom was that rule ordained? It was never ordained at any time or by anybody. It goes back to the primitive customs of the Saxon tribes.

Its relation to statutory law. During the past 800 or 900 years, however, another form of law has been encroaching on the common law—slowly at first, but of late more rapidly. This is statutory law, or law enacted by a regular lawmaking body. In Norman and Plantagenet England, as the earlier chapters of this book have already pointed out, the king made laws, first in his Great Council and later in parliament. And parliament became in time the dominant factor in making the statutes of the realm. Today, therefore, parliament can change any rule of the common law at discretion, and it does make some changes at almost every session. Year by year statutes are passed by parliament to cover things which the common law has failed to cover, or to clarify its provisions, or to codify them, or to enlarge them, or to vary them, or to repeal certain ones of them altogether, establishing different rules or principles in their stead. When the common law conflicts with a statute, the statute always prevails. Hence, as statutes multiply, the common law is cut into more and more deeply.

Present status of the common law in England. Nevertheless, the civil (as distinguished from criminal) law which the courts of England administer at the present time is for the most part common law. The statutes, numerous though they are, cover a relatively small portion of the entire field.⁷ They have dealt mostly with administrative matters and machinery. Many statutes would have no meaning were it not for the common law. This is because most of the underlying rules relating to the rights of the individual are based on common law principles—such, for example, as the principle that men are under legal obligation to pay their debts, to refrain from injuring the property of others, to fulfill their contracts, to support their families, to

⁶ See the chapter on "The Fundamental Law" in C. H. McIlwain's *High Court of Parliament* (New Haven, 1910).

⁷ The same is true of the United States, although hardly to a like extent. Some states have cut more deeply into the common law than others. In American law schools at least two-thirds of the instruction is devoted to the common law, and only one-third (or less) to statute law and equity.

seek redress in the courts and not by their own direct action, to keep the peace, and to be presumed innocent until proved guilty.

Whence arose the rule that jurymen should be chosen by lot, that there should be twelve jurors, and that they should reach their verdict in secret? By whom was it enacted that hearsay (with certain exceptions) is not evidence, that a man must not be compelled to incriminate himself, and that an accused shall be given the name of his accuser? These things did not originate in any constitution, charter, or statute. Where was it first decreed that the citizen cannot sue the state without its own consent? Or that a government official who commits an offense, even in his official capacity, is amenable to the ordinary courts? You will search in vain through the acts of parliament for the origin of any of these legal principles, or for a hundred other fundamental ones which every Englishman and American now accept as self-evident necessities, but which are the very things which differentiate Anglo-American jurisprudence from that of Continental European countries.

Common law and common sense. The purpose of law is to promote justice. And justice, as James Madison once said, is the purpose of government. Law is merely a body of rules whose aim is the systematic and regular attainment of that end. But to fulfill its high purpose the law must keep step with social and economic progress—which often it does not. The great merit of the common law is that it represents the survival of the fittest among the various legal rules which successive generations of men have tried. Having stood the test of time and proved itself suited to the needs of the modern community, the common law might well be regarded as a fairly true embodiment of justice. But people are often impatient with things that are old, and want things that are new—in law as in everything else. So parliaments and legislatures are importuned to set aside various rules of the common law, replacing them by statutory provisions.

EQUITY JURISPRUDENCE

Chancery or equity. Then there is equity. The courts of England administer, in addition to the rules of common and statute law, a third branch of jurisprudence known as the rules of chancery or equity. These terms convey a very vague, and often a misleading, impression to the layman's mind. He reads in the newspapers that some English estate is "tied up in chancery" or that in America some lawyer makes a specialty of equity cases—and both these expressions are as Sanskrit to him. Perhaps he has a guess that chancery has something to do with chance, and that equity has to do with equality. Chancery and equity are synonymous terms (the former being English and the latter American); they refer to a collateral branch of jurisprudence

which runs parallel with the common law and the statutes, with rules administered by the courts in much the same way. The rules of equity are not necessarily more equitable than the rules of common and statute law. Law and equity are alike designated to promote justice; but in somewhat different fields, and by different methods of procedure.

The origin of chancery. To understand what is meant by chancery (or equity) jurisdiction, one must know something about origins, and these go back to early Plantagenet, perhaps even to Norman, times. The embryo of modern equity is to be found in the mediaeval legal doctrine that the king could do no wrong, being the source of law and justice. As the legal sovereign he might mitigate the rigor of the law in the interest of justice. So whenever it appeared to a suitor in the regular courts that the strict administration of the common law would fail to give him justice, he could petition the king for intervention. He could ask the king to give him some redress that could not be had by bringing a lawsuit.

At first these petitions for royal intervention dealt mainly with situations which the common law did not cover, or covered inadequately, and in which the judges could find no way of redressing an obvious wrong. Or, on occasions, the king was petitioned to redress a miscarriage of justice which resulted from a technicality or an accident or an error in the application of the law. At the outset such requests came to the king infrequently, but as time went on they began to pour in by the hundreds. Naturally so, for when it became generally known that the king would intervene to forestall or redress injustice there were many persons with real or fancied grievances who sought his intervention.

Its early growth. In the beginning, moreover, the king tried to deal with each petition on its merits, giving the matter his personal attention and sometimes discussing it with his council. But he soon found that if he kept on doing this he would have time for nothing else. So he hit upon the expedient of doing the work by proxy, in other words, the plan of referring all such petitions to his chancellor or principal secretary.⁸ The chancellor, in those days, was invariably a bishop or other high churchman, and hence might be presumed to have sound ideas as to what constituted justice between man and man.⁹ He was commonly referred to as "the keeper of the king's conscience." But even the chancellor eventually found himself overwhelmed with petitions, and in time it became necessary to appoint assistants, or "masters in chancery"

⁸ The date commonly given for this transfer is 1280.

⁹ Furthermore, he was sure to be learned in the canon law of the Church which was based upon Roman law. For this reason a certain amount of Roman law found its way into the English system through the court of chancery.

to assist him in his work. Thus there gradually evolved a regular court which came to be known as the court of chancery.

Its evolution into a branch of jurisprudence. Now every petition presented to the court of chancery was originally supposed to be dealt with on its own individual merits. And so long as petitions were relatively few it was practicable to deal with them in this way. But with the great increase in its business the court of chancery found itself compelled to set up some general rules. No tribunal, when it has a large number of cases to adjudicate, can decide each of them on its own merits without reference to other cases. Sooner or later it finds that the merits of many cases are substantially alike, and hence that they must be decided in the same way, otherwise injustice would be done. Every court, no matter what its jurisdiction, inevitably creates a body of precedents which are virtually binding upon itself. So it was with the court of chancery. Precedents, traditions, maxims, rules, and exceptions were evolved one by one until England found herself endowed with that elaborate and intricate branch of jurisprudence which is now known as equity.

The three arms of the law. By the close of the Middle Ages, therefore, three branches of jurisprudence had been marked out in England—common law, statute law, and equity. All of it was the law of the land; all of it had its source in the authority of the king. Common law was the usage of the realm as declared by the king's courts; statute law was the work of the king-in-parliament; equity was the outgrowth of the king's position as the fountain of justice, above the law.

The rivalry of law and equity. In procedure, however, a distinction between law and equity had grown up, because the court of chancery did not follow the usage of the law courts, but developed a different system of its own. Incidentally, it began encroaching upon the law courts, claiming the right to issue injunctions against persons who tried to seek remedies at law. Thereupon a merry rivalry ensued, and for a time it seemed as if equity might eventually spread itself over the whole area of civil justice, but in the latter part of the sixteenth century equity was fenced back into its own field. The lines of demarcation between common law and equity were not made absolutely clear at this time, however, nor are they clear in all cases today. Still, in a general way, every lawyer knows where the law leaves off and where equity begins.

What equity is today. In what cases, then, are the rules of equity applied by the courts today? Let it be explained, first of all, that equity has nothing to do with crimes, but only with civil controversies. All criminal cases go to the law courts. In the second place, only a small proportion of civil cases come within the field of equity jurisdiction. Most of them are adequately

covered by the rules of common law or by the provisions of statutes and must be determined accordingly. Nevertheless, there are some controversies which are governed exclusively by the rules of equity—for example, controversies arising out of the administration of a trust by a trustee. And there are some cases in which redress may be sought either at law or in equity as the aggrieved person may prefer. These are known as instances of concurrent jurisdiction. In general, however, equity follows the law, in other words equity does not intervene save in cases where the remedy at law can be shown to be inadequate.¹⁰

Law and equity are now dispensed by the same courts. The same courts in England administer both law and equity. A statutory fusion of the two was provided by the Judicature Act of 1875. The court of chancery and the common law courts were merged into a single high court of justice. As a matter of convenience, however, the high court was organized in “divisions,” and to the chancery division were assigned all matters which were dealt with by the old court of chancery prior to 1875. But the work of the chancery division is not confined to the giving of remedies at equity; it extends to the giving of common law remedies as well. In a word, there are no longer two competing systems of jurisprudence, but a single system, with two branches which follow somewhat different procedures. Do not misunderstand this paragraph as implying, however, that the rules of law and equity have been combined. Equity is as separate a body of jurisprudence as ever it was. Only the administration of the rules has been merged.

The system of courts in general. This, then, is the jurisprudence that the courts of England administer. Note that it is the courts of England (including Wales), not the courts of Great Britain. There is no system of law applying to the whole United Kingdom, much less to the entire British Empire or Commonwealth of Nations. There is no one court with final jurisdiction over the whole British Empire, although the House of Lords is virtually a supreme court for Great Britain and Northern Ireland, as will be seen later. The various dominions, such as Canada and Australia, have their own legal systems and their own courts, but appeals may sometimes be carried from Australia and New Zealand to London, where they are heard and determined, as will be later explained, by the judicial committee of the privy council.

JUDICIAL ORGANIZATION

The Judicature Acts. The present-day organization and procedure of the

¹⁰ It would be folly to attempt, in a few paragraphs, any statement of what the rules of equity are, how they are administered, and how they supplement the rules of law. Even elementary textbooks on equity run into hundreds of pages, with chapters on trusts, mortgages, perpetuities, liens, fraud, mistake, accident, subrogation, accounting, marshaling of assets, estoppel, specific performance, discovery, injunctions, receiverships and all sorts of technical matters.

English courts are relatively modern. The courts themselves are much older, of course, but they were entirely reconstructed by the Judicature Acts of 1873-1876. Prior to 1873 the judicial organization of England was in a state bordering on chaos, with numerous tribunals possessing special functions, archaic procedure, and overlapping jurisdictions. The general reorganization then brought the higher courts into a unified system with simplified procedure.¹¹

The double hierarchy of English courts. One of the first features of English judicial organization that attracts the attention of an American student is the bifurcation of court business. In the United States the same court usually handles both civil and criminal cases, although the two classes of suits may be assigned to different sittings. The organization of the English courts, on the other hand, is based upon a vertical division between criminal and civil cases; the same courts do not usually exercise jurisdiction in both fields. A criminal case, it should be explained, is one in which the prosecution for example, for murder, burglary, forgery, and so on is conducted in the name of the crown; a civil case is one in which some private citizen or corporation brings a suit against another for example, to collect a debt or to obtain an award of damages for a breach of contract.¹² One aims to impose punishment for a crime; the other to obtain redress for a civil wrong.

1. The criminal courts. In England when a person stands charged with a crime he is brought before one or more justices of the peace, or, in the larger towns, before a stipendiary magistrate.¹³ These justices and magistrates are appointed by the lord chancellor on behalf of the crown. The justices are usually laymen without legal training, hence the popular saying that in England a minor court consists of "a justice of the peace who is a gentleman and a clerk who knows the law." Minor cases are dealt with summarily in these courts, but appeals may be carried to the court of quarter sessions, which is a county court.¹⁴ The court of quarter sessions also deals with cases which are beyond the jurisdiction of the individual justices but not serious enough to warrant holding the accused for the assizes. If the evidence appears to indicate the commission of a serious offense (such as murder or manslaughter), the prisoner is held for trial at the next assizes. This is the designation of a court which is held periodically in each county, and in each of the larger towns, by a judge (or sometimes two judges) of the high court

¹¹ A good general account of the present system is given in C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas, 1936).

¹² It is also possible, of course, for the crown to bring a civil suit against an individual or corporation.

¹³ This official is called a stipendiary magistrate because he receives a salary, while justices of the peace do not.

¹⁴ Some of the larger towns, however, have courts of quarter sessions of their own. The bench consists of the justices of the peace of the county or town, sitting together.

of justice who goes around on circuit and sits with a jury. The assizes, to some extent, deal with civil as well as with criminal cases.

Appeals in criminal cases. An appeal from these tribunals may be taken on points of law in any criminal case (or, under certain conditions, on questions of fact) to a court of criminal appeal which is made up of judges assigned to it from the king's bench division of the high court of justice. Finally, if the attorney-general gives consent, the defendant in a criminal case may carry his appeal to the House of Lords. The attorney-general does not ordinarily give this permission unless some new or perplexing legal question of public importance is raised. The gamut of criminal justice in England, therefore, runs through summary jurisdiction, quarter sessions, assizes, court of criminal appeal, and House of Lords.

2. The civil courts. Civil cases in which only small amounts are involved come up, first of all, in courts which are called county courts, although their jurisdiction does not in any way coincide with the bounds of the counties. These courts sit at frequent intervals in various parts of the districts which they serve. They are presided over by judges who are appointed for life by the lord chancellor from among barristers of at least seven years' standing. Appeals from the county courts are taken to one of the divisions of the high court of justice (see below), and from thence an appeal may be carried to the court of appeal which is the upper chamber of the high court of justice. If the amount involved is sufficiently large, the case comes before the high court in the first instance and does not go to a county court at all. And in a few cases the appeal goes directly to the court of appeal and may eventually be carried to the House of Lords.

The high court of justice. The high court of justice, to which reference has been made in the foregoing paragraph, is organized in three divisions, namely, the chancery division (or court of chancery), the king's bench division, and the division of probate, divorce, and admiralty. Cases come from the county courts to each of these divisions, depending on the nature of the case. Appeals from the three divisions go to the court of appeal,¹⁵ and under certain restrictions may be finally carried to the House of Lords. The ladder of civil courts, therefore, is county court, high court, court of appeal, and House of Lords.

The House of Lords as a court. For England, Wales, and Northern Ireland (and for Scotland in civil cases only) the House of Lords is virtually the court of last resort. But this does not mean that the 700 members of the House of Lords are expected to hear and determine the technical points of

¹⁵ The three divisions of the high court, together with the court of appeal, technically form one court known as the Supreme Court of Judicature.

law which come up on appeal from the courts below. All such appeals are heard by ten law lords, namely, the lord chancellor and nine lords of appeal in ordinary.¹⁶ These dignitaries, although members of the House of Lords, need not be and usually are not hereditary peers. The lord chancellor is the presiding officer of the House and a member of the cabinet. The nine lords of appeal (or law lords, as they are more commonly called) hold peerages for life. Invariably they are men of high judicial distinction, eminent judges or lawyers who are made life peers in order that they may exercise judicial functions which belong to the House as a whole. But these law lords, when in session, constitute for their own purpose the whole House of Lords and are not in any sense a mere committee of it. They give, and do not merely recommend, judgment.

A unique tribunal: the judicial committee of the privy council. Special attention should be called to one other high tribunal, the judicial committee of the privy council, which is the ultimate court of appeal in cases which come from the courts of the colonies and from certain of the dominions,¹⁷ as well as from the ecclesiastical courts in England.¹⁸ Thus its jurisdiction covers a very wide geographical range. But it is not a court in the ordinary sense of the term. It is made up of the lord chancellor and former lord chancellors, the nine law lords already mentioned, the lord president of the privy council and some other members of that body, together with certain judges appointed from the higher courts of the dominions—about twenty jurists in all. But the work of the judicial committee is actually performed by the lord chancellor and the nine law lords, aided by their overseas colleagues on matters affecting their respective territories. This assistance is indispensable because the appeals which come before the judicial committee involve not only the interpretation of the common law but the application of principles derived from various widely differing legal systems, such as those of Ceylon, Hongkong, and Malta.¹⁹

Basis of its jurisdiction. Not being a court in the usual sense of the term, the judicial committee of the privy council does not render judgment. It merely recommends to the crown that decisions of the courts in New Zealand, Jamaica, or elsewhere be confirmed or reversed. Every decision ends with

¹⁶ Other peers who hold, or have held, certain high judicial offices, may sit with them if they choose. Previous to 1947 there were seven lords of appeal in ordinary. The Appellate Jurisdiction Act (1947) changed the number to nine.

¹⁷ See below, p. 316.

¹⁸ In addition it hears appeals from the courts of the Channel Islands, the Isle of Man, and from prize courts in time of war. Prize courts are courts which deal with the condemnation of captured vessels and other property.

¹⁹ It will be observed that although there are two courts of last resort, the House of Lords and the judicial committee of the privy council, the men who decide the cases are virtually the same in both.

the words: "Their Lordships will therefore humbly advise His Majesty, etc." But since its recommendations are always followed, they are judgments to all intents and purposes. They are always followed by an order-in-council embodying the recommendations in the form of a royal decree. Here, again, we have a survival of the ancient principle that the crown is the "fountain of justice" and the final interpreter of the law and may set aside judicial decisions. That idea died out in England long ago, and decisions of the regular English courts can no longer be set aside by a royal order-in-council. But in the British colonies and in some of the dominions the doctrine of the crown's judicial supremacy has lived on.

Its procedure. When, therefore, a suitor is dissatisfied with a decision of the highest court of New Zealand, for example, he is in certain cases allowed to "petition His Majesty" for redress. His Majesty, so the theory runs, turns for advice to his privy council, and the privy council refers the issue to its judicial committee. The committee hears the arguments and recommends that the petition be granted or denied. That is the theory of the procedure. But practice has found a shorter cut and the petition goes directly to the judicial committee which in effect pronounces final judgment. There is no appeal from the rulings of the judicial committee, hence it is a supreme court within its own field of jurisdiction. And this domain is one of vast geographical extent. It serves as a tribunal of last resort for many millions of people, scattered all around the world from Bulawayo to Auckland, from Singapore to Barbados. It is also, to a diminishing extent, the supreme court of the Commonwealth of Nations.

Not all cases can be appealed to it. Not all cases arising in this vast area, however, can be brought to it on appeal. Under the provisions of the Statute of Westminster (1931) any dominion may shut off such appeals if it so desires. And most have done so.²⁰ From the colonies no appeal can be brought to London unless leave to bring it has been first obtained from the judicial committee itself. Such leave is hardly ever given in criminal cases; in civil cases it depends on the character and importance of the issues raised. Some cases, however, may be appealed to the judicial committee as a matter of right, that is, they are cases to which the jurisdiction of the committee has been definitely extended by law, and no permission is required to appeal them.²¹

JUDICIAL PROCEDURE

Some outstanding features of English judicial organization and procedure: 1. The life tenure of judges. In the organization and procedure

²⁰ See below, p. 316.

²¹ The details are explained in N. Bentwick, *The Practice of the Privy Council in Judicial Matters* (3rd edition, London, 1937).

of the English courts there are certain features which ought to have a word of explanation because they are largely responsible for the favorable reputation which these courts enjoy, both at home and abroad. Leading American lawyers and judges have frequently paid tribute to the independence, promptness, and impartiality with which justice is administered by English tribunals. One reason can be found in the position of absolute independence which all the judges of English courts enjoy. They are appointed by the crown and hold office for life or during good behavior. There are no elective judges in England or in any part of the British Empire or Commonwealth. Even Eire, in its self-drafted constitution, did not venture to follow the example set by most of the American states. The practice of electing judges is regarded in Great Britain as likely to draw the courts into politics and render them susceptible to political influences. So not only the United Kingdom but the various British dominions have sought to preserve the independence of the courts by holding to the principle of an appointive judiciary. Officers of the English courts other than judges—such as sheriffs and clerks—are also appointed, not elected, and have permanence of tenure.

2. The acceleration of business. A second characteristic of British judicial administration is its speed. Judicial procedure in British courts does not seem at first glance to be simple, and some archaic formalities are still retained in the court room, although they seem to serve no useful purpose. Nevertheless everyone knows that cases move far more rapidly in English than in American courts. This is mainly due to the greater discretion which English judges possess in dealing with legal technicalities. And this, again, arises from the fact that the rules of judicial procedure are made by a special “rule committee” consisting of the lord chancellor and ten other persons who have been trained in the law, not by legislatures composed mainly of laymen as is the case in America. English courts do not tolerate the pettifogg-ing, dilatory, hair-splitting tactics which lawyers are so freely permitted to use in American halls of justice. The judge rules his courtroom, pushes the business along, and declines to permit appeals from his rulings unless he sees good reason for doing so. Moreover, when appeals are taken, the higher courts do not upset the judgments of the lower ones for merely technical errors.

3. The higher standards of the legal profession. Something may also be attributed to higher standards among the members of the legal profession. In England, as has already been mentioned, there are two kinds of lawyers: solicitors and barristers. The solicitor deals directly with the client and prepares the case for trial. But he does not himself present the case in court; he engages a barrister to do this for him. The barrister is a specialist in presenting evidence; his business is to appear in court after everything has

been made ready for him. This division of labor usually results in cases being better prepared and better presented than in America where the same lawyer tries to do both things and often does neither of them well. To *prepare* a case requires patient industry, a scrupulous regard for accuracy, and a relish for details—in a word, the research quality. To *present* a case effectively requires familiarity with court procedure, quickness of perception, dexterity in questioning—in a word, the argumentative quality. Some lawyers have one quality and some the other. Very few have both.

4. The jury system has not been overburdened in England. A fourth feature of English judicial administration is the care with which the jury, as an institution, has been safeguarded against abuse. England is the ancestral home of the jury; it was there that the grand jury and the trial jury first became regular agencies of inquiry and adjudication. In the trial of all serious crimes, and in civil cases involving a substantial issue, a jury trial may be demanded in English courts except the lowest and the highest. In all serious criminal cases, moreover, the accused is proceeded against by a formal indictment which sets forth the nature of the offense, and he is entitled to a copy of this statement. But indictments are not returned by a grand jury, as in America.²² England virtually abolished the grand jury in 1933. The indictment is now framed by a judicial clerk with the aid of the prosecuting solicitor. England has been wise, moreover, in not overworking the trial jury system by extending it to the trial of unimportant civil disputes, thus making jury service a burden which busy citizens seek to evade. The jury system is under fire in the United States because it has been overworked and overburdened. No institution, however good, will stand an unlimited strain without giving way.

5. No manhandling of the witnesses. But the most impressive thing about the work of an English court is the fairness with which cases are heard and decided. The judges, not the lawyers, determine the pace. Barristers know that the manhandling of witnesses will not be tolerated, and they keep within the bounds of decency. They do not turn the court into a grill room. It amazes an American lawyer to see a murder trial begun and ended within a week, even when many witnesses are examined. In American courts it often takes that length of time to get the jury chosen. English courts keep abreast of their calendars and thus prevent long delays which are in effect denials of justice. It may be, of course, that this regularity with which the calendars are cleared occasionally spells injustice, but there is less of it than in courts where trial lawyers have their way.

²² In a large number of American states the prosecution of an offense now begins, in many instances, by the filing of a complaint by the prosecuting attorney and not by a grand jury indictment.

6. No regular system of administrative courts in England. A final characteristic of the English legal system remains to be noted, for it stands in contrast with what one finds in the countries of Continental Europe. This is the absence of a broad distinction between ordinary law and administrative law, between ordinary courts and administrative courts. In France, as will be seen later, the officers of the government have never been amenable to the ordinary courts for certain acts done in their official capacity. For such actions they must be sued, if at all, in special courts known as administrative courts which follow a procedure of their own. The English common law has recognized no distinction between the acts of a government official and those of an ordinary citizen. In theory the only official who is exempt from the jurisdiction of the regular English courts is the monarch himself.²³ English jurists have laid great stress upon this right of the citizen to summon public officials before the ordinary courts. They have regarded it as a right which places their legal system a notch above that of their Continental neighbors.

Is this an advantage? But there is no longer much occasion for Englishmen to harbor a superiority feeling on this point. They are rapidly developing a system of administrative adjudication for themselves—more rapidly than most of them realize. This is the inevitable result of the complexities which arise from government control of economic activities. Acts of parliament, especially those dealing with industry, public health, planning and trade have bestowed large powers upon various administrative agencies which in some cases are authorized to make final decisions without giving the parties an opportunity to appeal to the regular courts. And these decisions may involve considerable interference with the traditional liberties of the individual. So, while the United Kingdom does not have a “system” of administrative law and courts, as has existed in France, it can no longer be said that either there or in the United States is the old supremacy of the ordinary law and courts what it used to be.²⁴

7. The British concept of unconstitutionality. A significant contrast between English and American jurisprudence remains to be noted. The concept of unconstitutionality with which we are so familiar in the United States is wholly unknown to the courts of the United Kingdom. No law enacted by

²³ But even the crown can be sued. Formerly suits of this kind, such as those brought by government contractors claiming additional payment, required a special procedure known as a “petition of right” and the crown was immune from certain suits even under this procedure. But since the passage of the Crown Proceedings Act, 1947, the crown can be sued like an ordinary person in almost all cases, exceptions being made only for certain state functions such as the defense of the realm and the postal service.

²⁴ In the United States the same development has been taking place, especially during the past twenty years. See the discussion in William B. Munro, *Government of the United States* (5th edition, New York, 1946). For a spirited attack upon such developments in England by a former Lord Chief Justice, see Lord Hewart of Bury, *The New Despotism* (New York, 1929).

parliament is ever declared unconstitutional by the courts, for nothing that parliament does can be overruled by any court, high or low. It matters not that the law is repugnant to the provisions of Magna Carta, the Petition of Right, the Habeas Corpus Act, the Bill of Rights, the Parliament Act, the Statute of Westminster, or any other so-termed constitutional landmark. If it has been enacted in good form it stands. Hence when an Englishman says that some action of parliament is "unconstitutional" he merely implies that it is a departure from an age-old tradition. He does not mean that it is legally invalid or that there is any hope of having it declared so. But acts of the Canadian, Australian, and other dominion parliaments can be held unconstitutional in true American fashion if they conflict with the organic laws (which are written constitutions) on which their respective governments are based.

8. No formal guarantees of individual liberty. In America the citizen is accustomed to place a good deal of emphasis upon his constitutional rights—for example, the right to freedom of speech, freedom of the press, freedom from arbitrary arrest, freedom of worship, and the other rights which are guaranteed to him in the national or state constitutions. The Englishman has no constitutional rights in this sense, none that are beyond the legal authority of parliament to infringe. If parliament were to allow the taking of private property for public use without just compensation, no court would stand between it and the despoiled citizen. If it were to abolish trial by jury, no court could declare its action null and void. But the Englishman loses nothing by reason of this absence of formal written guarantees. His rights are securely guarded by the ancient usages and traditions of his government. These traditions and usages are in reality more effective than any set of phrases written on paper. Freedom of speech, freedom of the press, the right to trial by jury, and the other civil rights have become so deeply ingrained in the national life that parliament, with all its technical omnipotence, dares not abridge them in time of peace. If it did, a newly elected parliament would speedily restore them.

The influence of traditions. *Quid sunt leges sine moribus?* Of what value are laws without traditions? The written decree does not amount to much unless it has the will and sentiment of the nation behind it. The French constitution of 1791, for example, contained the most ironclad guarantees for freedom of the press, freedom of conscience, and the right of public meeting. Yet, as Professor Dicey says, "there was never a time in the recorded annals of mankind when each and every one of these rights was so insecure, one might almost say completely nonexistent, as at the height of the French Revolution."²⁵ The Russian constitution of 1936 contains provisions for free-

²⁵ *The Law of the Constitution* (New York, 1889), p. 186.

dom of the press; it forbids arbitrary arrests and is studded with comprehensive guarantees for all sorts of other civic rights. Yet these assurances, as everyone knows, have been chiefly honored in the breach. And in the Constitution of the United States there stands a provision that no citizen shall be deprived of the suffrage on account of race, color, or previous condition of servitude!

Customs are better safeguards than laws. There is a certain advantage in having the liberties of the citizen based on traditions rather than upon law. For laws and constitutions are necessarily precise and technical in their terminology. This precision makes them rigid, and when emergencies arise it is found that they either go too far or not far enough. It is exceedingly difficult to frame guarantees of individual liberty so that they will amply protect the citizen and yet not become susceptible of abuse. Freedom of speech and of the press cannot be defined in unqualified terms. In England the rights of the citizen are broadly guaranteed by long-standing usage. But parliament may make exceptions to any and all of them when the occasion demands. So the "high court of parliament" is a designation which has not lost its original significance. It is the supreme tribunal which interprets, applies, and modifies these usages upon which the practice of English government depends.

The Law. The most useful brief outlines of English legal development are Edward Jenks, *Short History of English Law from Earliest Times to 1933* (London, 1934); the same author's *Book of English Law* (3rd edition, London, 1932); Harold Potter, *Historical Introduction to English Law and Its Institutions* (3rd edition, London, 1949); the same author's *A Short Outline of English Legal History* (London, 1945); and C. H. S. Fifoot, *English Law and Its Background* (London, 1932). An outstanding older book is F. W. Maitland and F. C. Montague, *Sketch of English Legal History* (New York, 1915). The most elaborate treatise on the subject is William S. Holdsworth, *History of English Law* (12 vols., London, 1922-1938). Mention should also be made of the last-named author's one-volume general *History of English Law* (London, 1932).

The Courts. The development and organization of the English courts are discussed in H. G. Hanbury, *English Courts of Law* (London, 1944); Harold Potter, *Introduction to English Legal History* (3rd edition, London, 1933); and A. T. Carter, *History of the English Courts* (6th edition, London, 1935); while the court procedure, especially in criminal cases, is outlined in G. G. Alexander, *Administration of Justice* (Cambridge, 1915), and R. M. Jackson, *The Machinery of Justice in England* (Cambridge and New York, 1940). C. H. McIlwain, *The High Court of Parliament and Its Supremacy* (New Haven, 1910), is one of the most valuable books in the field. General descriptions of the British judicial system may be found in C. P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas, 1936), and J. A. R. Marriott, *Mechanism of the Modern State* (2 vols., Oxford, 1927), Vol. II, chap. xxii.

Three invaluable volumes are A. V. Dicey, *The Law of the Constitution* (8th edition, London, 1914); the same author's *Law and Public Opinion in England* (Oxford, 1914); and C. K. Allen, *Law in the Making* (revised edition, Oxford, 1930).

A general survey of an important topic may be found in Sir Cecil Thomas Carr's *English Administrative Law* (New York, 1941), and the development of administrative adjudication under the Labor government is described by Bernard Schwartz in his *Law and the Executive in Britain: A Comparative Study* (Cambridge and New York, 1949).

CHAPTER XVIII

Local Government

The liberties of England may be ascribed above all things to her free local institutions. Since the days of their Saxon ancestors, her sons have learned at their own gates the duties and responsibilities of citizens.—Blackstone

The importance of local institutions. Democracy is said to have an educative value. But the educative value of a democracy depends very largely upon the nature and spirit of its local institutions. The county, the city, and the town are potential schools of citizenship, as both England and America have long since discovered. It is in the arena of local politics that people most easily learn their first lessons in the art of governing themselves. Until you learn to govern, or be governed by, your own neighbors, it is futile to expect that you can successfully govern people afar off. The complications and difficulties of government increase as the square of the distance.

A word about origins. The English system of local government is the result of a long evolution, for the most part unguided and unplanned. There were shires, hundreds, townships, and boroughs in Saxon times, each with its own local authorities. After the Norman conquest the shires became counties, the hundreds disappeared, the townships passed for the most part into the hands of feudal lords and became manors, while the boroughs eventually secured their freedom and became chartered municipalities. Meanwhile a new unit of local administration, fostered by the church and virtually taking the place of the old township, came into being and ultimately attained some importance. This was the parish, with its voluntary meeting of the parishioners presided over by the parish priest.¹ Originally the parish meeting dealt only with church affairs, but it gradually acquired some civil functions as well. It was the forerunner of the town meeting in the New England colonies.

Local areas at the close of the Middle Ages. At the close of the Middle

¹After the Reformation he became known as the parson or rector.

Ages there remained, therefore, three principal areas of local government in England—the county, the borough, and the parish. The administrative work of the county was entrusted to officials known as justices of the peace whose functions were originally those of peace officers but who proved to be convenient authorities for supervising many matters of purely civil administration such as the building of roads and bridges, the maintenance of public order, and the care of the poor. These justices were appointed by the crown. The boroughs or chartered towns were governed, in the main, by close corporations. Originally all the freemen of the borough had a voice in its government. But the lists of freemen were gradually narrowed until only a very small fraction of the inhabitants were entitled to a share in choosing the borough officials. These officials usually consisted of a mayor, aldermen, and common councillors.

Such, in thumbnail sketch, was the organization of English local government during the Tudor, Stuart, and Hanoverian periods. It came down, practically unaltered, into the nineteenth century. In the course of this long interval much of its earlier democracy was sapped away; but the spirit of local self-government was never wholly extinguished. For years, during the Stuart period, the king ruled without a parliament. There were no parliamentary elections. But there were local elections, as before. In the boroughs and the parishes the freemen and the ratepayers continued to choose their own officers and thus keep alive the spark of English democracy.²

Effects of the Industrial Revolution on local institutions. Until the Industrial Revolution changed the face of England in the closing decades of the eighteenth century this scheme of government served tolerably well. There was no great popular dissatisfaction with it. But the transformation that was wrought by the coming of the factory system soon rendered it obsolete. New industrial towns grew up, almost overnight. The woolen mills gave many of the older boroughs a new lease of life, doubling and redoubling their populations within a few years.

The creation of new local districts. Soon these throbbing centers of industry cried out for better police protection, better roads, better sanitation. They made demands which the old local authorities were unable to meet. So appeal was made to parliament—and parliament, instead of replacing the old authorities, merely devised some new administrative machinery and added it on. Local improvement districts were carved out, overlapping boroughs or parts of boroughs. The authorities of these districts undertook the improvement of highways and sanitation which the officials of the boroughs had neglected. Dissatisfaction with the administration of poor relief in the parishes,

² Although the Stuart kings interfered with the municipal councils from time to time.

again, inspired the creation of poor-law unions, with elective officers (known as guardians) in charge of them. This practice of multiplying local improvement districts was the most significant feature in the development of English local government during the early years of the nineteenth century. And rather curiously it is also one of the most significant features in the development of American local administration today—more than a century later.³

The chaos of local areas. Now all this resulted in a veritable chaos of local areas, authorities, and jurisdictions. There were justices of the peace, overseers, guardians, vestrymen, churchwardens, mayors, aldermen, councillors, and commissioners of a dozen sorts. There were borough rates, poor rates, school rates, sanitary rates—all levied periodically upon the bewildered taxpayers. At one time it was estimated that there were more than 27,000 different local authorities in England and that eighteen different kinds of local taxation were being levied on the people. The jungle of jurisdictions had become so dense that nobody could find his way through it. Yet the national authorities were reluctant to take the reform of local government in hand and make a job of it, for parliament has always disliked to reconstruct anything from top to bottom at one stroke. With characteristic caution, therefore, they went at the work piecemeal.

The era of reform. A beginning was made with the boroughs because they were the areas most urgently in need of reform. After an elaborate investigation, parliament enacted in 1835 the Municipal Corporations Act which gave the boroughs (or cities) of England the general frame of local government which they retain today.⁴ Not until a half century later did parliament take up the problem of county government. The Local Government Act of 1888 reorganized county administration in England, notably by transferring the administrative powers theretofore exercised by the justices of the peace to elective county councils. It also created elective councils for the county boroughs, that is, for boroughs which had the status of administrative counties. Then, in 1894, came the District and Parish Councils Act which swept away most of the multifarious special districts (such as highway, burial, sanitary, and local improvement districts) and provided for the creation of new, unified, local areas in their place. These new areas were designated as urban districts and rural districts, known collectively as "county districts." In 1929 another statute made it possible to combine or abolish a large number of these districts. It also made new arrangements for granting the local

³ On this point see W. B. Munro, *Government of the United States* (5th edition, New York, 1946), pp. 817-818.

⁴ The difference between a borough and a city is of no political consequence. Chartered municipalities of whatever size are boroughs; but certain boroughs (by reason of their being the seat of a bishopric, or for some other reason) are entitled to call themselves cities.

authorities financial assistance from the national treasury.⁵ Finally, in 1933, a comprehensive Local Government Act consolidated into a single statute the powers and functions of the various local authorities. The framers of this act used the opportunity to eliminate many overlappings and anomalies which had accumulated during the preceding 100 years. It was mainly a codifying statute rather than one which introduced innovations.⁶

Proposals for further reform. Even yet, however, there seems to be need of further simplification, and a few years ago (1945) parliament authorized the setting-up of a local government boundary commission with power to rearrange boundaries, consolidate local areas, create new ones, and generally do whatever seemed necessary to promote "effective and convenient units of local-government administration," all subject to review by parliament. This commission devoted two years to a nation-wide study of the whole problem and came forth with an elaborate plan for radically overhauling not only the areas but the powers of the local authorities. Putting the plan into effect would require legislation by parliament and this has not yet been forthcoming.

Local areas today—five of them. As a result of the earlier consolidating process, however, there are now five principal areas of local government in England, namely, the administrative county, the borough, the urban district, the rural district, and the parish. The scheme of division may be briefly explained as follows: The whole country is first mapped off into administrative counties. Within these counties are urban and rural districts, the former being more densely populated than the latter. The rural districts are further divided into parishes with parish councils for the handling of neighborhood affairs. Any area which has received a municipal charter is a borough, and the larger boroughs are known as county boroughs because they virtually form administrative counties by themselves. London, as will be seen later, has a special government of its own.

COUNTY GOVERNMENT

1. The county: 1. The historic county. The county is the largest local government division, but the term "county" is used by Englishmen in two senses. First there are the historic English counties, descendants of the Saxon shires, with their ancient boundaries still unchanged. There are fifty-two of them, but since 1888 they have not served as areas of local administration. They still form constituencies for the election of members to parliament, however, and serve as areas of judicial administration with their justices of the

⁵ See below, p. 282.

⁶ For a full discussion see D. Meston, *The Local Government Act, 1933* (London, 1933).

peace. Each of these historic counties, moreover, has a lord lieutenant whose position has now become an altogether honorary one; and the old county still serves as a geographical basis of English social life. But there is no county council or other governing organ in any of them.

2. The administrative county. Much more important from a governmental point of view is the administrative county. There are sixty-two of these. In many instances they are identical in area with the historic counties, but in some they are not. The administrative county of London, for example, cuts into four historic counties. Within most of the administrative counties there are one or more county boroughs, as they are called. These are chartered boroughs which have been exempted from the jurisdiction of the counties within which they happen to be situated and given powers which the county authorities would otherwise possess. There are more than eighty of these county boroughs, but this number can be increased as the need appears.

The governing organ of an administrative county. The governing organ of the administrative county is a county council consisting of a chairman, aldermen, and councillors. The councillors are elected by the voters, one councillor from each of the election districts into which the county is divided. Their term is three years. The suffrage qualifications are the same as those established for municipal elections, as explained in an earlier chapter.⁷ The number of councillors varies according to the population of the county. The aldermen are not directly elected by the people but are chosen by the councillors. When the councillors have been elected, they choose one-third of their number to be aldermen; in other words, if there are sixty councillors, they add twenty aldermen to the council. They may choose these aldermen either from their own ranks or from outside. When they choose from their own ranks special elections are then held to fill the vacancies. The county aldermen hold office for a double term, that is, for six years, but one-half of them retire every three years. Councillors and aldermen sit together in the same body, and have exactly the same voting power. There is no separation of functions or authority: it is merely that the alderman has a longer term than the councillor, and a title that gives a little more prestige. The whole council, aldermen and councillors together, elects a county chairman, usually from its own membership but not necessarily so.

Their powers. A county council meets regularly four times a year, but may meet oftener if urgency requires. Its powers are extensive and varied. It supervises the work of the rural district councils; is responsible for the upkeep of main roads and bridges; has some duties with reference to county policing; maintains asylums, reformatories, industrial schools, and other

⁷ Above, p. 145.

county buildings; grants licenses (except liquor licenses); performs various functions in connection with the system of old-age pensions; and is the educational authority for the county.⁸ Most of its work is done through standing committees, such as committees on highways and bridges, on education, on public health, on housing, on finance, and on old-age pensions. Every county council has at least twelve standing committees, and may have more if it so desires. Often it has twice that number.

Committees and county officials. The county councils and their committees do not usually concern themselves with the routine work of administration, but only with questions of general policy. The routine is handled by a permanent staff of county officials, chosen on a nonpolitical basis. This staff includes a county clerk, treasurer, surveyor (who has charge of highway construction), health officer, director of education, and various other functionaries. They are chosen by the county council, but are not under civil service rules, and (with a few exceptions) may be removed by the council at any time.⁹ In practice, however, they are chosen on their personal and professional merits, and they are almost never removed for political reasons. The efficiency of county administration in England contrasts rather sharply with its inefficiency and wastefulness in some parts of the United States. The reason is mainly to be found in the fact that the administrative work of the English county is entrusted to men who are chosen for their competence, enjoy a sense of security in office, and do not have to play politics in order to hold their jobs from year to year.

The rural district. Within each administrative county the old rural parishes are now grouped into rural districts, 475 of them. Each district has an elected council to deal with certain matters of sanitation, water supply, and public health, the last especially. The council also has charge of minor roads, grants some licenses, and has an assortment of miscellaneous functions, the most important being housing. The English rural district corresponds roughly to the township in the middle western United States. Its importance is diminishing as England ceases to be a rural country.¹⁰

The parish. The ancient parish retains some slight significance as a subdivision of the rural district. It has a parish council or, if very small, a

⁸ It should not be understood, however, that the county council has immediate charge of all these things. Its police functions, for example, are performed through a standing joint committee, the members of which are selected in part by the county council and in part by the court of quarter sessions (see above, p. 262). This committee is practically independent but depends upon the county council for a portion of its funds.

⁹ The chief exceptions are the health officer, who, if he be a "whole time" official, cannot ordinarily be removed except with the consent of the national ministry of health. To remove a county surveyor the consent of the ministry of transport must be obtained if the county council has accepted a grant from that ministry toward the payment of his salary.

¹⁰ For a tabulation of local government functions see W. E. Jackson, *Local Government in England and Wales* (London, 1945), pp. 115-119.

parish meeting. The council or meeting is under the general supervision of the county council as regards its functions. These are minor and relate to allotments for the cultivation of vegetables, footpaths, village greens, and cemeteries.

The urban district. Whenever any part of an administrative county becomes thickly settled and hence has special needs in the way of sanitation, water supply, public health, and the like, the county council has the power to organize the area into an urban district. There are now over 570 of these. The voters living in the newly created urban district then elect an urban district council consisting of at least one councillor for each parish in the district. There are no aldermen in the district council, but the council elects its own chairman and may choose him from outside its own membership if it so desires. The urban district council has a variety of local powers in matters of minor highways, housing, sanitation, public health, and licensing. Its authority is somewhat more extensive than that of a rural district council and substantially the same as that of a noncounty borough council, described below.

CITY GOVERNMENT

The borough: county and noncounty. This brings us to the organization and work of the English borough or chartered urban municipality. There are 392 of these, ranging in size all the way from towns with a few thousand inhabitants to great industrial communities like Huddersfield and West Ham. Eighty are county boroughs and 309 are noncounty boroughs. The county borough is so called because it has the powers of a county as well as a city. Within its boundaries the county officers have no jurisdiction. This is quite a different arrangement from the one common in the United States where county officials continue to act within the largest cities. For example, officials of five separate counties operate inside New York City. The noncounty boroughs are the smaller cities and towns whose authorities superintend all the local services not entrusted to the county.

Borough councils. Both classes of borough have the same governmental arrangements. Their government consists of a single organ: the borough council (or town council, as it is more commonly called). This body is composed of a mayor, aldermen, and councillors, all sitting together. The councillors are elected by popular vote for a three-year term. The larger boroughs are divided into wards and the councillors are chosen under the ward system. Nominations for the council may be made by any ten qualified voters, and the election is by secret ballot without party designations. This does not mean, however, that the national parties are always ignored in borough elections.

In most of the big cities party lines are closely drawn although local personalities may sometimes blur the picture.¹¹

The aldermen. The councillors, once elected, choose aldermen to the extent of one third of their own number.¹² They can be chosen from the ranks of the councillors or from outside as the council may prefer. When councillors are chosen to be aldermen the vacancies are filled at a special election. The aldermen hold office for six years but sit with the councillors and have no special privileges. Every member of the council, whether he be a councillor or an alderman, has an equal vote on all questions. By reason of their longer terms and greater experience, however, the aldermen provide the council with a steadying influence which on the whole has been helpful.

The mayor. The mayor of an English city is chosen by the council, that is, by the aldermen and councillors sitting together. Here again the council has complete freedom to choose from its own membership or from outside. Sometimes it goes outside, but not usually. The mayor holds office for a single year and may be re-elected. He is the presiding officer of the council and is entitled to vote on all questions, but he has no executive authority. He makes no appointments, and the council's resolutions do not need his approval. He has no veto power like the American mayor. His position is largely one of honor and in most cases he receives no salary. An allowance is made for official expenses, but it is usually small. It has sometimes been said that a "wealthy gentleman" makes an ideal mayor because social rather than executive leadership is what the office demands. All this contrasts very sharply with the office of mayor in the United States.

Powers of the council. In England the council forms the real pivot of city government. There is no division of power between the executive and legislative branches of local administration, for the council is the executive and legislative authority combined. It adopts the by-laws, determines the local tax rate, prepares and votes the budget, appoints all officials, and supervises the work of the municipal departments such as streets, police and fire protection, health, sanitation, and schools.

Its committees. A large part of its work is done through committees. There is the watch committee, for example, which has charge of police, and the education committee in charge of schools. These committees for the most part do not have any final power, but merely transmit their recommendations to the whole council, which makes the ultimate decisions. The law requires

¹¹ There has been an increasing tendency to watch local elections closely as affording evidence of shifting national party strength.

¹² The aldermen who "hold over," that is, who have three more years to serve, also vote in making this choice.

that the council appoint a number of these committees for specified subjects but the council may appoint as many more as it considers necessary.

Coöption. It may also coöpt as members individuals who have not been elected to the council. The Labor party has tended to frown upon coöption as undemocratic. However, there can be no question that the plan has enabled use to be made of the valuable services of people who would never present themselves as candidates for municipal office. In some special committees, dealing with highly technical subjects, the whole burden of the work has had to fall upon experts who have been chosen in this way and serve without pay as a public service.¹³

Laymen and experts. Laymen govern the English city, therefore, even as they control the course of city government in the United States. But with this difference, that in England they work more closely in coöperation with experts and are more amenable to professional advice. The council committee relies on the advice of men who have technical knowledge. One reason for this may be found in the fact that the council is itself responsible for the selection of these men. It appoints the entire administrative staff, including the town clerk, treasurer, chief constable, borough engineer, medical officer of health—the heads of departments as we call them in America. These officers are not named by the mayor or by the city manager as is usually the case in American cities, nor are they selected by civil service competition.

How borough officials are chosen. The council is free to choose whom it will, provided the appointee has the general qualifications laid down by law.¹⁴ When, therefore, a vacancy occurs in one of these positions, the appropriate committee of the council receives applications for it. After considering the merits of these applications it recommends to the whole council the applicant who seems best qualified for the post, and this recommendation is practically always accepted. With a few exceptions, moreover, the council can dismiss an official at any time. In other words the administrative officials of English cities usually are not chosen under civil service rules, as we understand them, nor are they given civil service protection against removal.¹⁵ They are in fact permanent officials, but in most cases without any legal guarantee of permanence. This security of tenure, which rests on traditions, not upon laws, is perhaps the most outstanding feature of English municipal government and the one which contrasts most strongly with the situation in American cities.

¹³ On the committee system see G. M. Harris, *Municipal Self-Government in Britain* (London, 1939), Chapter iv.

¹⁴ There are a very few important appointments (for example, the chief constable) which require the approval of the national government.

¹⁵ Some boroughs, however, have set up their own local system of competitive examinations as a means of choosing the appointees. The London County Council makes some use of the national civil service examinations to fill vacancies at the "administrative" level.

In the lower ranks. Municipal employees in the lower ranks are chosen by the heads of their respective departments. In some boroughs the council has prescribed certain minimum qualifications for appointment to minor posts in certain municipal departments, but as a general rule there are no limitations on the discretion of the department head. Consequently there would seem to be room for personal or partisan favoritism, and criticism on this score has become more frequent in recent years. It is not alleged, of course, that grossly unqualified persons are at times appointed to either the higher or the lower ranks of the English municipal service because of party or personal influence, but it is rather common knowledge that as between two applicants whose qualifications are good, and about equally good, the one whose party allegiance coincides with that of the majority in the council or with that of the department head is not the one likely to be passed over. Or, to put it in other words, there is no recognition that "to the victors belong the spoils" except when the seekers after the spoils are well qualified, and about equally well qualified.

CENTRAL SUPERVISION OF LOCAL GOVERNMENT

Relation of central to local government in England. How much home rule does an English city have? Is it left to manage its affairs in its own way, or is it subject to strict supervision by the national government? The answer is this: It has less home rule than the American city, but more of it than has usually been found in the cities of Continental Europe. Central control of English local government has been expanding steadily, moreover, and its expansion affords a lesson for the friends of municipal home rule in the United States.

The process through which the central control of English cities has developed: grants-in-aid. Infringements upon local self-government are never popular in democratic countries, hence they have to be disguised. The usual method of masking them is to offer the cities "something for nothing" such as grants-in-aid or subsidies from the central treasury. That is the main administrative channel through which central control of municipal government has developed in England. As a first step the national authorities offer to help the counties or boroughs with part of their expenditures. They agree to pay a portion of what it costs each city to maintain the local police department, for example. Then comes a regular inspection of the police by national inspectors to see that the government's contribution is being properly spent. This inspection discloses weak spots, and the next step is to provide (as was done in the Police Act of 1919) that the central government shall have power to frame and enforce regulations relating to the organization, pay,

clothing, pensions, and housing of municipal police. Or, as it did in 1921, the national government, to promote the public health, may agree to defray a portion of the local health expenditures. (Subsequent to this move in 1921, the national government, by an act of parliament in 1929, provided that if surveys by national health officers disclosed any local health service to be deficient the grant could be withdrawn.) In other words the grant-in-aid becomes a prelude to inspection; then it leads to the imposition of uniform national standards upon the local authorities. As one English writer remarks, "The inspectors do not merely see and hear on behalf of the central authority; they often speak and even act for it."¹⁶

Block grants. Prior to the Local Government Act of 1929 all national subsidies were for designated purposes—police, schools, roads, housing, health services, and so forth. This statute abolished some of these separate grants in favor of a "block grant," a general subvention to meet the municipality's needs and to be expended as the council might decide. It was hoped that this system would promote civic economy and encourage self-administration. In fact, however, municipal needs rapidly outgrew the inelastic block grants and additional earmarked grants had to be used as before. Approximately one-half of all local government expenses are now borne by the national treasury.

Local governments which live on money provided by an outside authority are on the way to political subordination. "Who pays the piper calls the tune" is as true today as ever it was. Of course the situation is far from simple. The local authorities know that they cannot refuse to accept the national subsidies. The voters would turn them out if they did so, for the tax burden would then fall more heavily upon them as ratepayers than upon their neighbors in other municipalities. Furthermore, there is now a real national concern in some matters that once were deemed to be of local concern only, for example, in city planning and housing. The national grants are also a means of ironing out differences in the taxpaying capacities of rich and poor areas. Yet the fact remains that the independence of local government is being seriously threatened in the land of its birth. The Englishman's traditional interest in the government of his own community has been declining. England, a half century ago, was the classic land of local self-determination. Today there are at least a half dozen national agencies which exercise close supervision over affairs of English cities. They make investigations, lay down rules, designate the procedures to be used, prescribe the qualifications of local officials, and order this or that to be done. The chief of these grant-administering departments are the ministry of health, the home office, and the ministry of education. Others include the ministry of transport, the ministry of town

¹⁶ Herman Finer, *English Local Government* (London, 1933), p. 325.

and country planning, and to a lesser extent, the board of trade and the ministry of agriculture and fisheries.¹⁷

The chief organs of supervision. The ministry of health has general control over water supply, sanitation, over-all public health including the new national health service, and the approval of local borrowing in certain instances. The home office has surveillance over local police administration, and the ministry of labor is responsible for the inspection of factories and mines. The ministry of education, as its name indicates, oversees the local education authorities. The ministry of transport has supervisory jurisdiction over tramways or street railways, ferries, docks, and harbors. Gas supply is nominally under still another central supervising authority, although most of the control, so far as gas plants operated by the municipal authorities are concerned, is exercised by the ministry of health. Electric lighting comes within the purview of electricity commissioners who are related to, but not part of the ministry of transport. The ministry of town and country planning has been given statutory powers in the field which its title implies. And the ministry of agriculture and fisheries has some supervisory powers in relation to markets.¹⁸

Thus the local authorities have to deal not with one central department but with many. And the amount of supervisory jurisdiction which these several departments possess is not in all cases precisely defined. In some cases two departments share different portions of the same task. The board of trade, for example, has to do with the development of water power, while the ministry of health deals with water supply. This distinction is quite logical, of course, inasmuch as the one is a matter of industry and the other touches the public health. But the parceling of jurisdiction in this way is somewhat confusing. It differs from the practice in most of the American states where the supervision of all public utilities (water, gas, electricity, street railways, telephone lines, and even motor buses) has usually been concentrated in the hands of a single body, commonly called a public utilities commission.

Extent to which supervision is applied. In no case, it should be pointed out, is the work of local administration directly undertaken by the national authorities in England. They merely advise, inspect, regulate, give approval, or withhold approval. The general laws provide, in many instances, that the county, borough, district, or parish authorities may do certain things with the approval of the appropriate national department. They also provide, very frequently, that the central department may make rules and regulations for the guidance of the local authorities. The latter sometimes resent this paternalism,

¹⁷An analysis of this problem with a suggested solution may be found in Charles Barratt, *Your Local Authority* (London, 1947).

¹⁸It should be noted that some functions, formerly local, have been removed entirely. Poor relief, once a parish matter, is now handled by the national insurance scheme.

but there seems to be no way of avoiding it, especially if the national treasury contributes part of the cost. And in any case, under modern urban conditions, it is hardly practicable to allow the local authorities complete freedom in matters affecting public health, planning, education, and police protection. These things, from their very nature, must be handled with a certain amount of uniformity throughout the country. The massing of people into great cities is bound to bring some measure of centralized control, no matter how strong the tradition of local self-government may be. It is doing this in the United States as well as in England.

English and American methods of centralized control compared.

But the growth of central control in England has taken a different slant from that which it is following in America. Central control over local government in England is *administrative* in character and hence flexible. In the United States it is chiefly *legislative* and hence more rigid. The English plan is to provide, in the main, that some central board or bureau shall determine whether local authorities may do this or that. The American plan is to settle such matters by a general law, although nowadays it is becoming more common to enlarge the discretion of the central administrative authorities. This results from a realization of the fact that the discretion of a board or official is more elastic than the provisions of a statute can possibly be. When a law, for example, provides that every county in the state shall establish and maintain a public hospital, it disregards the fact that all counties are not alike in their size, needs, problems, or financial resources. To treat them alike often means injustice to some. In England, under the policy of administrative control, such matters are not made subject to uniform rules laid down by law but are left to be dealt with as individual problems by the appropriate administrative authorities.

An illustration: municipal borrowing in the United States. The essential difference between English and American methods of central control over local government may be made clearer, perhaps, by a couple of illustrations. Take the matter of municipal borrowing. Many of the American states have fixed limits on the amount of indebtedness that their cities may incur. Some of them have put these limits in their state constitutions; others have established them by state law. In either case the usual provision is that a city may borrow up to a certain percentage of its assessed valuation and no more. It may borrow as it pleases up to this point, without getting the consent of any state authority, and when it reaches the limit it must stop unless it can obtain special legislation exempting it from the debt ceiling. This, of course, is a poor arrangement in rapidly growing urban communities. It makes borrowing too easy until the limit is reached; then it makes borrowing almost impossible.

The result is that some cities waste their borrowing power on unessential things and are then forced to do without desirable improvements because the statutory limit has been reached.

No municipal debt limits in England. But in England when a city wants to borrow money it does not have to reckon with any fixed debt limit. It cannot borrow a single shilling until it has first obtained approval, either from parliament by special act, or from the appropriate central department. In most cases the approval must be asked by the local authorities, whereupon the officials of the ministry investigate not only the financial resources of the city but the merits of the particular proposal. After the investigation has been concluded, a report is made and the central authorities then approve or disapprove the application.¹⁹

Why the English plan would not be practicable in the United States. The advantages of administrative supervision, as compared with legislative control, are beyond question. The former is much more effective in achieving the desired end. It saves the time of the lawmaking body. But it would not be practicable, on any broad scale, under the American plan of government. A system of administrative control postulates the responsibility of the administration to the legislature. In England this responsibility exists, for all the central departments are the agents of parliament and accountable to it. But in the United States the administrative authorities are not the agents of the legislature. Most of them are appointed by the governor, who, in turn, is not under the legislature's control. The state legislatures have no agencies to whom they can delegate powers and from whom they can exact a continuous responsibility. For that reason American state legislatures have tried to keep the supervision of local government in their own hands, and have exercised it in the only way open to them, namely, by enacting laws. The English system of administrative supervision has been widely praised, and it is deserving of praise; but it would hardly be workable on a comprehensive scale in the American states so long as they hold to the system of separation of powers.

A concluding word on the English practice of central supervision. Writers speak of the English "system" of central control, but it can hardly be called a system. It is not systematic. It has no uniformity. It has grown by accretion. From time to time it has been partially reorganized and some of the twists taken out of it; but it has none of the coherence that has traditionally marked the organization of central control over local government in Continental countries. The English habit has been to let things

¹⁹ A beginning has been made along this same line in a few American states, where a state board has been given power, on petition of any ten taxpayers, to review any proposed municipal bond issue and veto the proposal if it finds good reason for doing so.

alone until they can be let alone no longer, then to make no more repairs than are urgently required.²⁰ To use a homely metaphor, they do not tear down the old house and build a new one with all modern conveniences. They merely patch the roof, repair cracks in the walls, add a wing here or a gable there, put in an extra window, close up an unused door—and so on, decade after decade, until not much semblance of the old structure remains.

THE GOVERNMENT OF LONDON

The three Londons. Something should be said about the government of London, for this metropolis has bulked large in English political life for nearly a thousand years. But what is London? The average American is confused, as well he may be, when he reads that the City of London had a population of about 15,000 at the last census. This statement is literally correct, but of no real consequence because the "City" is a very small part of London. The administrative county of London contains 4,500,000 people, within an area of 116 square miles, while Metropolitan London, commonly known as "Greater London," contains over 8,500,000. It is this Greater London, almost 700 square miles in area, to which Englishmen refer when they contend that it leads Greater New York in the race for primacy among the world's cities.

The City of London. The City of London is merely the ancient core of the modern leviathan, occupying an area of about one square mile. It is the historic entity which began as a Celtic town and became successively a Roman *civitas*, a Saxon borough, a Norman city. It has remained to this day with its ancient boundaries virtually unchanged and its old form of municipal government unaltered for several centuries. The area of the "City" is occupied by banks, warehouses, and public buildings, which explains why it has a resident or "night" population of only about 15,000. In the day hours, however, its streets are thronged by hundreds of thousands who come into it to do business.

The satellites of the old City. Around this historic municipality there grew up, in the course of time, a number of satellite communities which were organized as parishes, each with its own government. Eventually there were more than 100 of these parishes, together with the City of Westminster, all solidly built up and forming a great circle. This was the situation in 1888 when parliament was asked to intervene and consolidate the entire metropolis.

The administrative County of London. It attempted to solve the prob-

²⁰ It ought to be mentioned that the description of local institutions, given in the foregoing pages, does not apply to Scotland and Northern Ireland. They have their own areas and organs of local government which differ considerably in detail, but not in general arrangement, from those of England. The same is true of the overseas dominions, the difference in these cases being much more extensive.

lem by creating the administrative County of London with an area of over 100 square miles. Provision was made for a county council with extensive powers to serve as the chief governing organ of the new administrative county. A little later the County of London was divided into metropolitan boroughs, each having a limited range of local self-government.

Metropolitan London. Finally, there is the London Metropolitan Police District, or Metropolitan London, which covers about 700 square miles. It is not a regular municipality but a district for police purposes only. It has no elective governing officials and its inhabitants do not constitute a municipal corporation. Yet people usually call themselves Londoners if they live within its boundaries, which means that almost one Englishman in every five is a "Londoner" on that basis of reckoning—and is usually proud of the fact. "When a man is tired of London," said Dr. Samuel Johnson, "he is tired of life; for there is in London all that life can afford."

How the "City" is governed. The City of London is a corporation made up of the freemen of the city; that is, of ratepayers who pay a small fee for the privilege of having their names inscribed on the rolls. This body of freemen governs the city through a lord mayor and three councils (or courts, as they are officially called); namely, the court of aldermen, the court of common council, and the court of common hall.

To explain how these three councils are organized, and what their respective powers are, would take more space than can be allotted here.²¹ Suffice it to say that both aldermen and common councillors are elected by wards, while the court of common hall is a sort of town meeting. Most of the power rests with the common council, which manages all the municipal services through its committees; but the lord mayor of London is chosen by the court of common hall from among the senior aldermen who have served in the office of sheriff.

The lord mayor of London. The lord mayor of London has no independent powers. His office is purely an honorary one. He appoints no city officials and performs no executive functions. He merely presides at meetings of the three councils and represents the city on occasions of ceremony. At his own expense he provides a stately banquet and a gorgeous pageant—the one for the dignitaries of the city and the other for the people. He is always knighted during his term, if he has not already attained that rank. The salary attached to the office is generous (ten thousand pounds a year), but all of it, and more, goes for official entertainments.

How the County of London is governed. The administrative County of London is governed by a county council made up of one hundred and twenty-

²¹ For the details see the books listed at the end of this chapter.

four councillors and twenty aldermen. The councillors are elected by popular vote for three years, the suffrage being the same as in other municipal elections. The aldermen are chosen by the councillors, either from within their own ranks or from outside, and serve for six years. Councillors and aldermen sit together and have the same voting power. Together they elect each year a chairman of the council and may choose him from outside the council's membership. The practice has been to elect a new chairman each year, and as a rule the choice has been made from within the council's membership.

Powers of the London county council. The powers given to the London county council are extensive in scope. It is the sole authority with respect to main sewers and sewage disposal, fire protection, tunnels and ferries, and bridges (except those in the city). It has charge of those street improvements which are metropolitan in character. Subject to the approval of the ministry of health, it makes public health regulations, but the enforcement of these regulations is left largely to the authorities of the metropolitan boroughs (see below). The county council also has large powers with respect to the construction and operation of street railways (tramways), and it has undertaken several great rehousing schemes, involving the demolition of slum areas and the erection of workmen's dwellings. It is responsible for the maintenance of the larger London parks (except crown parks) and for providing public recreation. It has comprehensive functions in the matter of education, including elementary, secondary, and technical schools. Finally, the council has a long list of miscellaneous work to do—such as the licensing of theaters, the regulation and inspection of lodging houses, the administration of the building laws, and the maintenance of various institutions for the unfortunate.

The county chairman and the permanent officials. The administrative County of London has no mayor and no official corresponding to a mayor. Its chairman is not an executive officer, for although he presides at council meetings he has no other powers. The council itself is the executive authority. But since executive functions obviously cannot be performed by so large a body, they are delegated by the council to committees, and these committees devolve a large part of the work on the permanent officials. The higher officials in this staff are appointed by the council at its discretion, but the subordinate posts are now filled by civil service competition.

Metropolitan boroughs; powers of the borough councils. Mention has been made of the metropolitan borough councils which share in the work of London government. The administrative County of London is a federation of boroughs, twenty-eight of them. These metropolitan boroughs are very unequal in size because an attempt was made to follow the traditional boundaries. Each borough has a local government consisting of mayor, aldermen, and councillors,

all sitting together to form a borough council. This council has charge of local street-building, paving, lighting, and cleaning. It also undertakes the construction and maintenance of subsidiary sewers, the enforcement of health regulations, and the building of workmen's dwellings. It may, and often does, own and operate the local electric lighting plant, and it has various other functions of a local character subject, in some instances, to the supervision of the county authorities.

The metropolitan police district. The county council and the borough councils have nothing to do with the policing of London. The "City of London" has its own police. For the great circle surrounding the City there is a metropolitan police force. The metropolitan police district includes the whole County of London and parts of several other counties. At the head of the district is a police commissioner who is appointed by the crown on the recommendation of the home secretary. He has assistant commissioners, appointed like himself. The commissioner has entire charge of organization and discipline; but the financial administration of the force is entrusted to a receiver, appointed by the crown, who is responsible for the erection and management of all police stations, the awarding of contracts, the purchase of supplies, and all other matters outside the actual work of preserving law and order.

Scotland Yard. The headquarters of the Criminal Investigation Department of the Metropolitan Police are in a group of buildings on the Thames embankment known as Scotland Yard, famous in the annals of detective fiction. In many ways the CID performs functions similar to the American FBI, maintaining a central fingerprint file of known malefactors and so forth. The CID is less restricted in its activities than the FBI, however, because Britain is a unitary and not a federal state. It is ready to help local police whenever its services are required. Altogether the English police system is partly centralized in contrast with the American. Many county and city police forces are partly supported by treasury subventions on the home secretary's recommendation which is given only if, upon inspection, they measure up to national standards.

History. Sidney and Beatrice Webb, *English Local Government* (6 vols., London, 1906-1922), is an elaborate historical survey. Josef Redlich and F. W. Hirst, *Local Government in England* (2 vols., London, 1903), is also to a large extent historical. Attention may also be called to E. S. Griffith, *The Modern Development of City Government in the United Kingdom and the United States* (2 vols., London, 1927), to K. B. Smellie, *History of Local Government* (London, 1946); and V. D. Lipman, *Local Government Areas, 1834-1945* (New York, 1949). W. A. Robson, *The Development of Local Government* (Revised Edition, London, 1948), gives a more concise outline. Mention should also be made of the volume entitled *A Century of Municipal Progress* by H. J. Laski and others (London, 1935). For a convenient history of the British Police, see Charles Reith, *A Short History of the British Police* (London, 1948).

General Descriptions. Books of this nature are Herman Finer, *English Local Government* (London, 1945), and E. L. Hasluck, *Local Government in England* (Cambridge, 1936). J. P. R. Maud, *Local Government in England*, contains a summary account, published in the Home University Library Series (London, 1932). A useful short description is given in E. B. Ashford, *Local Government, A Simple Treatise* (London, 1937). John J. Clarke, *Outlines of Local Government of the United Kingdom* (14th edition, London, 1940), is useful for special students of the subject and contains a good classified bibliography. Another general description is that in H. Townshend-Rose and H. R. Page, *The Councillor's Handbook* (2nd edition, London, 1946), and the same authors' *Local Government Up to Date, 1939-1945* (London, 1946). Other books worthy of mention are William Anderson and others, *Local Government in Europe* (New York, 1939); W. Eric Jackson, *Local Government in England and Wales* (London, 1945); by the same author, *The Structure of Local Government in England and Wales* (New York, 1950); and J. H. Warren, *The English Local Government System* (London, 1946).

Local Government Law. Publication of the *Encyclopedia of Local Government Law* was begun in 1905 and since that date the material has been kept up to date by periodical supplements. Sir W. E. Hart, *Hart's Introduction to the Law of Local Government and Administration* (3rd edition, London, 1946); H. T. Rose, *English Local Government Law* (London, 1938); A. N. C. Shelley and D. J. Beattie, *Local Government Law and Administration in England and Wales* (London, 1945); W. I. Jennings, *Principles of Local Government Law* (2nd edition, London, 1939); W. A. Robson, *Law Relating to Local Government* (London, 1930); and H. E. Smith, *Municipal and Local Government Law* (London, 1933) are general books on the subject. Current information is given in the *Municipal Year Book*, published annually.

Special Problems. The following books deal with various aspects of local government and its problems, as indicated by their titles: H. R. Page, *Co-ordination and Planning in the Local Authority* (Manchester, 1936); T. S. Simey, *Social Administration* (Oxford, 1937); J. Sykes, *A Study in Local Government Finance* (London, 1939); J. M. Drummond, *The Finance of Local Government: England and Wales* (New York, 1952); D. N. Chester, *Central and Local Government: Financial and Administrative Relations* (New York, 1951); Oxford Agricultural Economics Research Institute, *Country Planning* (Oxford, 1944); J. R. and U. Hicks and C. E. W. Lesser, *The Problem of Valuation for Rating* (London, 1944); and Frank Jessup, *Problems of Local Government in England and Wales* (New York, 1949).

London. The most convenient sources of information concerning the government of the British metropolis are Sir Gwilym Gibbon and Reginald Bell, *History of the London County Council* (London, 1939); P. A. Harris, *London and Its Government* (revised edition, London, 1933); and H. Morrison, *How Greater London is Governed* (London, 1949). But mention should also be made of William A. Robson, *The Government and Misgovernment of London* (London, 1942), and A. J. Glasspool, *The Corporation of the City of London* (London, 1924), which explains the government of the city. Much interesting material is contained in the *Annual Reports* of the London County Council, and H. Haward, *The London County Council from Within* (London, 1932), gives an interesting account of the LCC by one who had close contact with it for over forty years.

CHAPTER XIX

Wales, Scotland and Ireland

*All government, indeed every human benefit and enjoyment,
and every prudent act, is founded on compromise and barter.—
Edmund Burke*

A paragraph to explain the proper use of British political terminology would seem to be appropriate here. The United Kingdom is properly used to include England, Wales, and Scotland, together with the Channel Islands and the Isle of Man in the Irish Sea. It does not include Northern Ireland, hence the use of the term "The United Kingdom and Northern Ireland." Southern Ireland, is now an autonomous republic. The Commonwealth of Nations is the term used to designate the United Kingdom and Northern Ireland together with the self-governing dominions.

WALES

The Anglo-Welsh union. For more than 600 years Wales has been politically conjoined with England. Originally an independent area under Celtic tribal "kings," it was brought under English control in the latter part of the thirteenth century (1284). A little later the king's infant son was given the title "Prince of Wales." There is a legend, often repeated in books of English history that the king promised his new Welsh subjects a "prince who could not speak a word of English," and fulfilled his pledge by giving them one who was too young to speak a word of anything. The title has ever since gone to the eldest son of the British sovereign, but it conveys no political powers whatsoever. Wales has no parliament of its own but elects its share of members to the British House of Commons. In the British ministry there is no secretary of state for Wales akin to the secretary of state for Scotland. All laws passed by parliament for England apply to Wales unless they specify otherwise, as they sometimes do. And occasionally parliament passes a statute applying to Wales alone, as for example in 1920 when it

disestablished the Established Church (Anglican) in Wales but retained its old status in England.¹ As in Scotland there has been some agitation in Wales for a separate parliament and home rule, and there is a small Nationalist party which keeps this movement alive, but it does not appear to be making much headway.²

SCOTLAND

The beginnings of Scotland. Scotland, like England and Wales, was populated by Celtic tribes when the Romans first landed on the shores of Britain. But the Roman legions never pushed their way into the northern sections of the island and Scotland never became a part of the great Latin empire. Nor did the Saxons, when they came to Britain from across the waters, succeed in conquering all of Scotland. The Scottish highlands continued to be inhabited by people of the Celtic race, although many Saxons worked their way into the lowlands which constituted the southern part of the country. The various tribes or clans of Scotland gradually became united under a monarchy with its capital at Edinburgh. In due course, moreover, parliamentary institutions were developed, not widely different from those of England.

The royal union with England in 1603. Throughout the Middle Ages and into the modern period, Scotland managed to retain her independence. It happened, however, that the royal families of England and Scotland became related by the intermarriage of members who were not immediately in line for either throne. Then, on the death of Queen Elizabeth in 1603, there were no Tudor heirs at hand and the Scottish people had the satisfaction of seeing their own king, James VI, inherit the throne of England.³ He proceeded to Westminster, took the title of "James I of England and VI of Scotland," and inaugurated in England the ill-starred dynasty of four Stuart kings. In this way Scotland and England became united under the same line of monarchs, but each retained its own parliament. The same king dealt with one parliament at Edinburgh and with another at Westminster.

Its results. This royal union naturally brought the two countries into closer relationship. It stood the strain of the English civil war, the Cromwellian dictatorship, the expulsion of James II, and the succession of the Orange monarchs. Yet it was not regarded as altogether satisfactory by either country. It was a union without unity. The Scots were especially desirous of a share in the industrial and commercial prosperity which England was deriving from the trade with her colonies; they also desired the privilege of freely shipping all their products into the English market. England was not willing

¹ In the whole of England except the county of Monmouth which adjoins Wales.

² There is a full discussion of Anglo-Welsh relations in E. L. Chappell, *The Government of Wales* (London, 1943).

³ James VI was the son of Mary, Queen of Scots, who was a first cousin of Queen Elizabeth.

to concede either of these things unless Scotland would submit to virtual annexation. So relations once more became strained and in 1704 the Scottish parliament announced that unless something were done it would proceed to choose a monarch of its own.⁴

The parliamentary union of 1707. To forestall an impending separation, therefore, commissioners from both countries were appointed to reach a common ground. They managed to frame a treaty embodying concessions on both sides, and this treaty was approved in 1707 by the parliaments concerned. Briefly, it provided for the organic union of the two countries, under the name of Great Britain, with a single parliament at Westminster. The Scottish parliament was abolished, and Scotland obtained representation in both the House of Lords and the House of Commons. She was permitted to retain her own system of laws and legal procedure, her own established religion (Presbyterian), and her distinctive local institutions. In return for the abolition of their parliament the Scottish people were granted full freedom of trade with England and with the English colonies. It was a fair bargain; one country obtained political and the other economic advantages. Scotland traded her parliament for pounds, shillings, and pence. She did it with her eyes open. And the Scottish people, on the whole, have not regretted the agreement of 1707. The union ushered in an era of material prosperity which lasted for a long time and made the southern part of Scotland one of the richest sections of the United Kingdom.

Present government of Scotland. The government of Scotland, as arranged by the Act of 1707, has remained unaltered in most of its essential features to the present time. There is a secretary of state for Scotland who has a seat in the British cabinet. Like other members of the cabinet he is chosen by the prime minister. Invariably he is a Scotsman, although there is no legal requirement to this effect. In a general way the secretary is responsible for the supervision of administrative affairs in Scotland, in which work he is assisted by various officials and boards, including a lord advocate, undersecretaries for Scotland, a solicitor-general, and other functionaries. All laws passed by the British parliament apply to Scotland unless otherwise stipulated, and many things are uniform in the two countries, as, for example, the systems of national taxation and national defense. On the other hand, many things are different, because Scotland retains her own system of civil law and procedure, her own hierarchy of courts, her own ecclesiastical organization, and her own distinctive scheme of local government.⁵

The representation of Scotland in parliament. Scotland, as has been

⁴ *A Short History of Scotland* by G. M. Thomson is a useful compendium for further details.

⁵ Even when a law applies to Scotland as well as England, separate administrative authorities may be set up. For instance, the national health service north of the Tweed is administered as Scotland's national health service.

said, is represented in the House of Lords by sixteen Scottish peers and in the House of Commons by seventy-four members, which is about what the population warrants. In both chambers the Scottish members have exactly the same status as the English, and are eligible for appointment to all ministerial positions. As a rule they have been well represented in British ministries, so well, in fact, that their prominence is considerably greater than the relatively small population of Scotland would seem to justify.⁶ Scotland, moreover, has one additional privilege, namely, that public bills in the House of Commons, when they concern Scotland alone, are referred for consideration to a special committee of the House which consists of all the members from Scotland reinforced by a group of other members. This committee therefore functions, in a way, as a miniature Scottish parliament.

Success of the Scottish union and failure of the Irish union contrasted. On the whole, the feeling between these two sections of the United Kingdom has grown cordial during the period since 1707. Various new concessions to Scotland have been made. There has been no general clamor for Scottish home rule, much less for a Scottish republic. Home rule bills have been introduced into the British parliament from time to time, but they have never been backed with much enthusiasm by more than a minority of the Scottish people. Still, there is considerable grumbling about the neglect of Scottish interests at Westminster, and proposals for some alterations in present arrangements are broached occasionally. But there has never been any powerful movement to dissolve the partnership such as developed in Southern Ireland during the decades preceding the Irish Treaty of 1921.⁷ This is the more noteworthy when one recalls the fact that Saxon and Scot (as well as Saxon and Celt) were at swords' points, for over 500 years preceding their union into the Kingdom of Great Britain and Ireland.

Reasons for this. The reasons for this marked difference between Anglo-Scottish and Anglo-Irish relations are not far to seek. Scotland was never conquered by England; she entered the union a free country; her people accepted a changed political status in return for fair compensation. Nor had the Scottish peasantry ever suffered under an "ascendancy" of English landlords. Apart from merely sentimental considerations, Scotland lost nothing by joining with England. Few intelligent Scotsmen of today contend that their country would now be better off if the treaty of 1707 had been rejected. But Ireland went into the union under vastly different circumstances. The island was invaded and conquered by English armies; the line of Irish kings was

⁶ Of the twelve prime ministers who have held office during the past fifty years, four (Roseberry, Balfour, Campbell-Bannerman, and Ramsay MacDonald) were Scots and one (Lloyd George) a Welshman.

⁷ See below, pp. 296-298.

brought to an end by force, and the powers of the Irish parliament reduced to a shadow. This parliament was allowed to continue its existence, but it represented the Anglo-Irish landlords rather than the majority of the Irish people and it could do nothing that was not subject to review at Westminster. The union of 1800, moreover, was put through the Irish parliament by political trickery and manipulation. Ireland derived from the union of 1800 no commercial advantages of any account. It was a one-sided bargain. Ireland gave up her parliament, mere wraith of a parliament that it was, and got little or nothing in return. Finally, a difference in predominant religions has had its implications.

IRELAND

Antiquity of the Irish problem. Ireland's troubles with England go back a long way before the union of 1800. They are almost primeval. It is not possible to understand the problem of Anglo-Irish relations, as it stands today, without some knowledge of its antecedents, and this would involve the telling of a rather long and complicated story—too long to be recounted in detail here.*

Early history of Ireland; The Pale; Poyning's Law. Ireland, at the dawn of history, was peopled by Celts, the kinsmen of the Scots and of the ancient Britons whom the Saxon invaders drove out of England. These Celts had not united into a single Irish monarchy but were being governed by several native rulers when Henry II of England crossed the Irish Sea in 1171-1172 and conquered part of the island, more particularly the region around Dublin which came to be known as The Pale. In this area English law and English judicial procedure were gradually established. In due course a parliament was established within The Pale, but its authority was greatly limited at the close of the fifteenth century by a statute known as Poyning's Law. This law provided among other things that all English statutes should apply to Ireland and that the Irish parliament should never be summoned except with the prior consent of the English authorities, whose approval was made necessary for all its actions.

The settlement of Ulster; Ireland and Cromwell. Then various happenings in Ireland accentuated the strained relations between the two countries. During the reign of Henry VII (1509-1547) England broke relations with the Holy See and became Protestant, while Ireland remained Catholic. A little later the English government undertook to subdue the northern part of the island, and when the people rebelled their lands were confiscated. Next (1611) the great plantation of Ulster was settled by emigrants from England and Scotland who became possessors of these confiscated lands. Then during the

* For a full account of it see the references at the close of this chapter.

struggle between Charles I and his parliament, most of Ireland seized the opportunity to rise in revolt and was almost successful. But the day of reckoning soon arrived. When Oliver Cromwell dislodged Charles from the throne he proceeded to Ireland on a mission of reconquest—a mission which he performed with a cruelty that Ireland has never forgotten.

Ireland and James II; the Boyne (1690). This Cromwellian reconquest did not break the spirit of the Irish people, but merely left them with a determination to undo the wrong at the first opportunity. Such an opportunity seemed to be at hand in 1689 when James II, having been driven from the English throne, landed in Ireland and called upon the people for aid. Once more all Ireland, except Ulster, responded. But once more it was a bad gamble, for James and his army were overwhelmed at the Battle of Boyne (1690), a victory which is celebrated on its anniversary (July 12) by the “Orangemen” in Northern Ireland to this day.

Ireland during the eighteenth century. During the eighteenth century the attitude of the English authorities softened somewhat. The American Revolution also carried its lesson to Westminster, and in 1782-1783 the English parliament renounced its claim to make laws for Ireland. But the English crown continued to be represented in Ireland by a viceroy who was in reality controlled by the English House of Commons inasmuch as he was a member of the English cabinet. This was an anomalous arrangement, bound to engender friction as time went on.

Irish rebellion of 1798. Then came the French Revolution which gave Ireland an opportunity which her people could not resist. Not only did it send a wave of republican sentiment over the country but it brought England into a critical war with France. The French revolutionists naturally carried their propaganda to Ireland; they convinced the people that with England's back to the wall they needed only to strike for deliverance, and swept them into the Irish Rebellion of 1798. England's back may have been to the wall, but her hands proved to be free, and the rebellion was crushed in a whirl of reprisals.

THE UNION OF 1801 AND AFTER

The Act of Union. Thereupon the British cabinet decided that Ireland should be put under bonds for good behavior. Great Britain must take no future chance of being stormed from the rear. Accordingly the prime minister, William Pitt the younger, prepared a plan for the parliamentary union of England and Ireland. An Act of Union was drafted and was submitted to the Irish parliament for acceptance. Outside of Ulster, public sentiment of Ireland was strongly against the measure; nevertheless by dint of bribery,

intimidation, coercive persuasion, and other corrupt practices it was forced through the legislative chambers in Dublin. It is said that Pitt spent nearly a million pounds sterling to get the measure passed. Some members of the Irish parliament got titles, some got lucrative offices, some were bribed outright.

Its provisions; the half century after the union. By the terms of the union the Irish parliament was abolished, and Ireland obtained representation in both Houses at Westminster—twenty-eight members in the House of Lords and one hundred in the House of Commons. Executive authority in Ireland was to be exercised through a viceroy, representing the crown. As such he was responsible, through the ministry, to the British House of Commons. Irish laws and courts were unaffected by the union, save that the British House of Lords now became the court of last resort. There were almost no economic compensations. The alien landowner continued to possess most of the country.⁹ Until after 1832, moreover, the suffrage was as narrow in Ireland as in England, hence the Irish members did not represent the body of the Irish people. Many of them, as in England, were named by patrons or chosen by close corporations, and many were salaried or pensioned officers of the crown. As the nineteenth century wore on, many Irishmen began to emigrate to the United States and to the British colonies, and after the potato famines of 1846-1849 this exodus assumed huge proportions.

THE STRUGGLE FOR HOME RULE

The home rule movement. An agitation for the repeal of the union, led by Daniel O'Connell, had been set afoot as early as 1841, but for many years it made slow progress because it was associated in the English mind with republicanism and revolution. In due course, however, an association calling itself the Home Rule League undertook to secure the election of home-rulers to parliament and succeeded in creating an Irish Nationalist party in the House of Commons. The Nationalist party increased its numbers to the point where it eventually held the balance of power, and in 1886 its leader, Parnell, persuaded Gladstone, the Liberal prime minister, to bring in an Irish home rule bill.¹⁰

The long struggle. But this measure did not succeed in making its way through parliament. What it did succeed in doing was to force Gladstone's resignation and to split the Liberal party. During the next thirty-five years

⁹ And to treat the Irish peasantry as virtual slaves. The details are almost incredible. See W. E. H. Lecky, *History of Ireland in the Eighteenth Century* (London, 1892). As Lecky wrote, the Anglo-Irish aristocracy were "exposed to all the characteristic vices of slaveholders, for they formed a dominant caste, ruling over a population who were deprived of all civil rights and reduced to a condition of virtual slavery. They were separated from their tenants by privilege, by race, by religion, by the memory of inexpiable wrongs." (Vol. 1, p. 282).

¹⁰ The Nationalists at this time had eighty-three members in the House of Commons.

the question of home rule for Ireland was a constant troubler in British politics, with a series of parliamentary attempts at settlement, none of which met with much success. Meanwhile, losing their patience, certain elements in Southern Ireland combined to form an organization known as Sinn Féin,¹¹ pledged not merely to home rule but to the establishment of an Irish republic. It was this organization that inspired the abortive Easter Rebellion of 1916 when Great Britain again had her back to the wall in the First World War.¹² The rebellion itself was quickly put down, but the spirit of rebellion persisted and efforts at coercion on the part of the British authorities made little, if any, headway. Then, and only then, did the time become ripe for negotiations on a give-and-take basis. It had taken nearly 700 years to bring the two countries into this frame of mind.¹³

The treaty of 1921 and the new Irish constitution. So negotiations for a treaty began in 1921. Delegates from both sides undertook the work of reaching a compromise, and eventually were able to agree upon the draft of a treaty. This agreement provided, among other things, that a constitution for Southern Ireland should be prepared and that when this constitution had been accepted by both sides it should go into effect. The agreement furthermore provided that the Irish Free State was to have "the same constitutional status. . . as the Dominion of Canada"—in other words, what had come to be known as "dominion status" within the Commonwealth of Nations. The constitution was duly framed by a group of Irish leaders; it was then ratified by a newly elected Dail Eireann, and went into effect on December 6, 1922, as the constitution of the Irish Free State.¹⁴

The accession of De Valera (1932). But the constitution of 1922 did not prove satisfactory. During the ensuing ten years it was several times amended, and when Eamon De Valera became head of the government after the general election of 1932 he proceeded to fulfill his pledge that he would make the Free State completely independent of Great Britain. A measure eliminating the requirement that members of the Irish parliament should take an oath of allegiance to the British king was soon passed. Later De Valera exercised the right to dictate the choice of a governor-general for the Free State—a right which the British government had conceded to all the dominions during the imperial conference of 1930. Then he obtained enactment by the Irish parliament of a bill which eliminated from the Free State constitution the right of the governor-general to withhold the royal assent from Irish

¹¹ Pronounced "Shin Fane" and meaning "ourselves alone."

¹² Dramatized in Sean O'Casey's play, *The Plough and the Stars*.

¹³ The story of these years 1916-21 is fully told in W. A. Phillips, *The Revolution in Ireland* (2nd edition, London, 1926).

¹⁴ A copy of this document may be found in Darrell Figgis, *The Irish Constitution* (Dublin, 1923).



Drawn by Theodore R. Miller
Ireland Showing the Border Between Northern Ireland and the Irish Republic

legislation. Another measure abolished the right of Irish citizens to carry appeals from the supreme court of the Free State to the privy council in London.

An important decision. The authority of the Irish parliament to do all this, under autonomy granted to all the dominions by the Statute of Westminster was subsequently upheld by the judicial committee of the privy council in the case of *Moore v. Attorney-General for the Irish Free State* (June 6, 1935). This decision held that the Statute of Westminster (see pp. 314-315) superseded the British Act of 1922 approving the Irish constitution and hence that the latter could be varied at any time by a simple act of the Irish parliament. In other words, the Statute of Westminster was held to have emancipated the Free State, along with the other British dominions, from all parliamentary restrictions upon constitutional change.¹⁵

THE NEW CONSTITUTION OF SOUTHERN IRELAND

The new Irish constitution. Finally, in 1937, President De Valera presented to the Dail a wholly new constitution, which was accepted by that body. It then went before the voters at a general election and was ratified, but not by the overwhelming vote that had been expected. While this constitution for the Republic of Ireland proclaims itself to be established for the whole of Ireland, it nevertheless declares that "pending the reintegration" of the whole island the laws enacted by the Irish parliament shall extend only to the territory formerly constituting the Irish Free State."

The complete break with Great Britain. The adoption of the new constitution did not bring about a complete break with the British crown. The king was still recognized as the symbol of Commonwealth coöperation and it was provided that the crown might act on behalf of the Republic of Ireland (when advised by the Irish authorities to do so) in such matters as the appointment of diplomats and the making of international agreements. Subsequently, in 1949, the constitution was amended to eliminate the crown entirely and break the British connection completely.¹⁶

The president. Now that the Republic of Ireland has become an independent European republic, it is appropriate that something be said about its government, for the constitution of the Republic of Ireland contains some

¹⁵ In rendering its decision the judicial committee of the privy council declared that "the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty—a statement which would seem, on the face of it, to be clear enough as judicial decisions go. But it has not been generally so regarded by English constitutional authorities. See, for example, A. Berriedale Keith, *The Governments of the British Empire* (New York, 1935), pp. vi-vii, and Henry Harrison, *Ireland and the British Empire* (London, 1937).

¹⁶ Despite Ireland's resignation from the Commonwealth, the British parliament passed the Ireland Act (1949) providing that Ireland should continue to have some of the advantages of Commonwealth membership and should not be regarded as a foreign country.

unusual provisions which are of interest to the student of comparative government. The president of the Republic of Ireland is elected by direct vote of the people for a seven-year term and is re-eligible. He serves as the titular chief executive and on nomination of the Dail appoints the prime minister. On the advice of the prime minister, and with the approval of the Dail, he likewise appoints the other members of the ministry. But the president must follow the advice of the ministry except in those matters where the constitution gives him absolute discretion, or where it provides for consultation with the council of state, or where it provides some other channel of procedure.¹⁷

The prime minister and the other ministers. All this should not be understood to mean that the president of the Irish Republic is a figure of dominating influence like his prototype in the United States. His position and powers are much more nearly akin to those of the crown in England. The substance of power is in the hands of the prime minister of the Irish Republic who holds office so long as he commands the support of a majority in the Dail Eireann or Irish House of Representatives. His post is quite as dominating as is that of the prime minister in London—if anything, more so. In addition to his premiership the prime minister is also minister for external affairs. There is a deputy prime minister and eight other ministers who are the heads of such departments as finance, agriculture, education, defense, and so on. All are appointed by the president on the recommendation of the prime minister after approval by a majority in the Dail.

The Irish parliament: 1. The Dail. The parliament of the Irish Republic consists of two chambers, namely, a House of Representatives (*Dail Eireann*) and a Senate (*Seanad Eireann*). The former is made up of 147 members elected from constituencies having at least three members under a system of proportional representation. Universal suffrage is provided. The maximum term of the Dail is seven years, but like the British House of Commons it may be dissolved at any time within that period. The power of dissolution rests with the president on the advice of the prime minister, but the president

¹⁷The powers of the president may be summarized in this way: (1) *On nomination of the Dail* he appoints the prime minister. (2) *On the advice of the prime minister* he (a) appoints other ministers after the Dail has given its approval, (b) may dismiss ministers, (c) summons and dissolves the Dail, (d) signs bills that have been passed or which are deemed to have been passed by both Houses, (e) exercises supreme command of the defense forces subject to regulation by law, (f) grants pardons, (g) performs all other functions which are bestowed on him by the constitution but are not otherwise limited. (3) *After consultation with the council of state* he (a) may convene either or both Houses, or communicate with them, (b) may refer any bill, other than a money bill or a proposed constitutional amendment, to the supreme court for an advisory opinion, and if the court's opinion is adverse shall refuse to sign the bill, (c) may address a message to the nation, if the ministry also approves. (4) *On the request of a majority in the Senate or a two-thirds majority in the Dail* he may decide that a bill passed without the Senate's concurrence is of such national importance as to warrant its being submitted to a popular referendum or withheld until after a general election. (5) *At his own absolute discretion* he may refuse to dissolve the Dail on the advice of a prime minister who no longer controls a majority in it.

may refuse to dissolve the Dail on the advice of a premier who has "ceased to retain the support of a majority" in it.

Its powers. The Dail is given the usual powers of a lower chamber, with the sole right of initiative in financial measures. Provision is made, as in the rules of the House of Commons, that no bill or resolution for the appropriation of money can be passed by the Dail unless the purpose of the appropriation shall have been recommended by a message bearing the prime minister's signature.

2. The Senate. The Irish Senate has sixty members, of whom eleven are named by the prime minister and six are chosen by the two Irish universities (National University and the University of Dublin). The remaining forty-three are selected from five panels containing names of persons who have been nominated to represent the chief national interests and activities, namely, the cultural interests, agriculture, labor, industry and commerce, and public administration, including the social services. The method of constituting the five panels is left to be determined by law, and the final selection of Senators from the panels is made, under a system of proportional representation, by a small electorate consisting of every person who shall have been a candidate for the Dail at the last general election and who shall have received at that election at least 500 first-preference votes. For these senatorial elections the whole country forms a single constituency. Senators hold office for the same term as members of the Dail and a general election for the Senate must take place within ninety days after the former is dissolved.

Relations between the two chambers: 1. Money bills. The rule as to relations between the two chambers with respect to money bills is much the same as in the British House of Commons. Such measures, when passed by the Dail, go to the Senate. Within twenty-one days a money bill must be returned to the Dail which may accept or reject the Senate's amendments. If the measure is not returned within the twenty-one days, or if the Dail rejects the amendments, the bill is deemed to have been passed by both chambers and becomes a law. Thus the Dail is given absolute supremacy as respects money bills. In case of disagreement as to whether a measure is or is not a money bill, the chairman of the Dail decides; but an appeal from his ruling may be taken to a committee on privileges appointed for the purpose. This committee, named by the chairman of the Dail after consultation with the council of state, is to be composed of an equal number of members from both chambers, with a judge of the supreme court as its chairman. The decision of the committee on privileges is final.

2. Other measures. As respects all measures other than money bills the two chambers are given equal powers of initiative. And the assent of both

chambers is necessary to the enactment of such measures. But if the Dail passes any bill or resolution, other than a money bill, and if such bill is rejected by the Senate, or left without action, or passed with amendments to which the Dail does not agree—how is such disagreement settled? The constitution provides that in such cases the Dail must wait for ninety days after the measure has been sent to the Senate. Then, within the next 181 days it may by its own action give the measure the force of law. If, however, the measure is one which is certified by the prime minister as an urgent or emergency measure, the Dail may shorten the ninety-day period if the president concurs in such action. Thus it is that the Dail can enact any measure, without the Senate's concurrence, after a lapse of ninety days, and any emergency measure immediately.

Advance rulings on constitutionality. All bills are sent to the president for his signature and for promulgation by him. He has no power of veto, but in the case of any measures other than money bills and proposals to amend the constitution, the president may submit such measure to the supreme court for a ruling on its constitutionality. This ruling must be given within thirty days; meanwhile the president delays his signature and if the court decides adversely to the bill he withholds it altogether and the measure fails to go into force. This arrangement is designed to have the constitutionality of measures determined before they are put into effect.

Provisions for a referendum. A somewhat novel provision, moreover, enables measures to be withheld for a popular referendum. In the case of any measure (other than a proposal to amend the constitution) on which there has been disagreement between the two chambers but which has been passed under the rules relating to such disagreements, a petition can be presented requesting the president not to sign the measure. This petition must state that the measure "is of such national importance that the will of the people thereon ought to be ascertained." The petition must be signed by a majority of the members in the Senate, and by at least one-third of the members in the Dail. On receipt of such a petition the president may withhold his signature until the people at a referendum have approved the measure or until the Dail has once more approved it after a dissolution and new election.

Irish supreme court. The Irish supreme court, established by the new constitution, is given both original and appellate jurisdiction. Its members are appointed by the president and the number of judges is regulated by law. Justices hold office for life and may not be removed except for stated misbehavior or incapacity, and then only on resolutions passed by both chambers.

Amending the constitution. Amendments to the constitution are to be initiated in the Dail and after having been passed (or deemed to have been

passed) by both chambers, must be submitted by referendum to the people.

NORTHERN IRELAND

The government of Northern Ireland (Ulster). By the treaty of 1921 the six northern counties of Ireland were given the option of joining the Free State or of continuing their separate government under the Act of 1920. They chose the latter alternative. This, however, did not mean a "dominion" status, for the British parliament retains final authority in a number of matters. Still, it did assure a large measure of home rule. Northern Ireland has her own parliament, with a Senate and a House of Commons, a cabinet and a governor. Members of the House are elected by the people from single-member districts. The Senators are chosen by the House for eight-year terms. When disagreement arises between the two chambers over a nonfinancial bill, the measure goes over until the next session. Then, if the disagreement persists, a joint sitting is held and the matter voted upon. In the case of money bills the Senate can reject but is not permitted to amend. If it rejects a money bill, however, a joint sitting can be required at once, without waiting till the next session. The governor of Northern Ireland is appointed by the crown but is bound by the advice of his ministers, as in the dominions. The ministers, in turn, are responsible to the House. Northern Ireland continues to be represented in the British House of Commons as before the treaty. It sends twelve members there.

The six northern counties constitute nearly the whole of the province of Ulster and have formed the more prosperous portion of Ireland. They occupy an area less than half the size of Maryland, with a population of about 1,250,000. Belfast is the capital. During the Second World War permission was given for the basing of a large contingent of American troops in Northern Ireland, and the government of Southern Ireland protested vigorously against their presence. It has continued to demand that the British authorities withdraw from Northern Ireland and cause that area to be incorporated in the Irish Republic. The "Irish question," therefore, is not yet entirely settled.

Scotland. See G. M. Thomson, *A Short History of Scotland* (London, 1932); R. S. Rait, *Scotland* (Modern World Series, London, 1930); I. Finlay, *Scotland* (Oxford, 1945); J. A. Bowie, *The Future of Scotland* (Edinburgh, 1939); E. E. B. Thompson, *The Parliament of Scotland, 1690-1702* (London, 1935); A. V. Dicey and R. S. Rait, *Thoughts on the Union between England and Scotland* (London, 1920); Douglas Nobbs, *England and Scotland 1560-1707* (New York, 1952); C. deB. Murray, *How Scotland is Governed* (London, 1938); W. E. Whyte, *Local Government in Scotland* (2nd edition, London, 1936); and James E. Shaw, *Local Government in Scotland* (Edinburgh, 1942). A representative example of

the literature of Scottish nationalism is G. M. Thomson, *Scotland, that Depressed Area* (Edinburgh, 1935).

Ireland, History. There are many political histories of Ireland. Useful for the general student are S. Macmanus, *The Story of the Irish Race* (new edition, New York, 1944); W. O'C. Morris, *Ireland 1494-1905* (Cambridge, England, 1909); P. S. O'Hegarty, *A History of Ireland Under the Union 1801 to 1922* (London, 1952); S. Gwynn, *Ireland* (Modern World Series, London, 1926); J. C. Beckett *A Short History of Ireland*, (New York, 1952); and Hugh Sherman, *Modern Ireland*, (London, 1952). Attention should also be called to E. R. Turner's *Ireland and England* (New York, 1919) which contains a very good bibliography.

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The latest and best book on the relations between Ireland and the Commonwealth of Nations is Henry Harrison, *Ireland and the British Empire* (London, 1937). The story of the Easter Rebellion is carefully narrated in W. B. Wells and N. Marlowe, *A. History of the Irish Rebellion of 1916* (London, 1916).

The government of Northern Ireland is described in A. S. Quekett, *The Government of Ireland Act, 1920, and Subsequent Amendments* (Belfast, 1933), and in Nicholas Mansergh, *The Government of Northern Ireland* (London, 1936). For the Southern Irish attitude toward partition see John Hawkins, *The Irish Question Today: The Problem and Danger of Partition* (London, 1941).

Wales. See G. P. Ambrose, *The History of Wales* (London, 1947); and E. I. Chappell, *The Government of Wales*, (London, 1943). For a popular and readable account of life, customs, and institutions in Wales, see Maxwell Fraser, *Wales* (2 vols., London, 1952).

CHAPTER XX

British Dominions and Colonies

It would be performing more than can reasonably be expected from human sagacity if any man, or set of men, should always decide in an unexceptionable manner on subjects that have their origin thousands of miles away from the seat of the imperial government.—Lord Durham

The British Empire and Commonwealth is the name used to cover that extraordinary international agglomeration that is usually colored red on the maps of the world. It would take a book rather than a chapter even to outline all the governments and their interrelations that go to make up this unprecedented political phenomenon. Broadly speaking there are two kinds of relationship, as indicated in the name. The colonies, with a wide variation in degree of self-government are all legally subject to legislation at Westminster and have chief executives that are appointed in England rather than named in the colony. The dominions are those nations that once were colonies but are now. . . "equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs (though united by a common allegiance to the crown), and freely associated as members of the (British) Commonwealth of Nations."¹ The parentheses indicate the necessary modifications in this 1926 definition, for allegiance to the crown is no longer necessary and the adjective "British" has been dropped.

India. These changes were necessitated by the desire on the part of both the Indian and British governments to keep India within the commonwealth. This was politically possible for India only if all distasteful reminders of British domination were eliminated. Accordingly a formula was found by which India kept its membership by acknowledging the king as a symbol of commonwealth coöperation, while at the same time India owes him no al-

¹ This is the Balfour declaration adopted by the Imperial Conference of 1926 and carried into law by the Statute of Westminster, 1931

legiance. If this seems a little confusing, one must admire the flexibility of commonwealth arrangements and the ingenuity of this legal invention whereby India could keep its cake of commonwealth connection and at the same time eat its cake of complete independence. It seems clear then that membership in the commonwealth requires acceptance of the king as head of the association but no longer requires allegiance to the crown. So far only India among the dominions has repudiated such allegiance. Even the name "dominion" has lately fallen out of favor as indicative of subordination and as drawing a distinction between Great Britain and the other commonwealth countries.

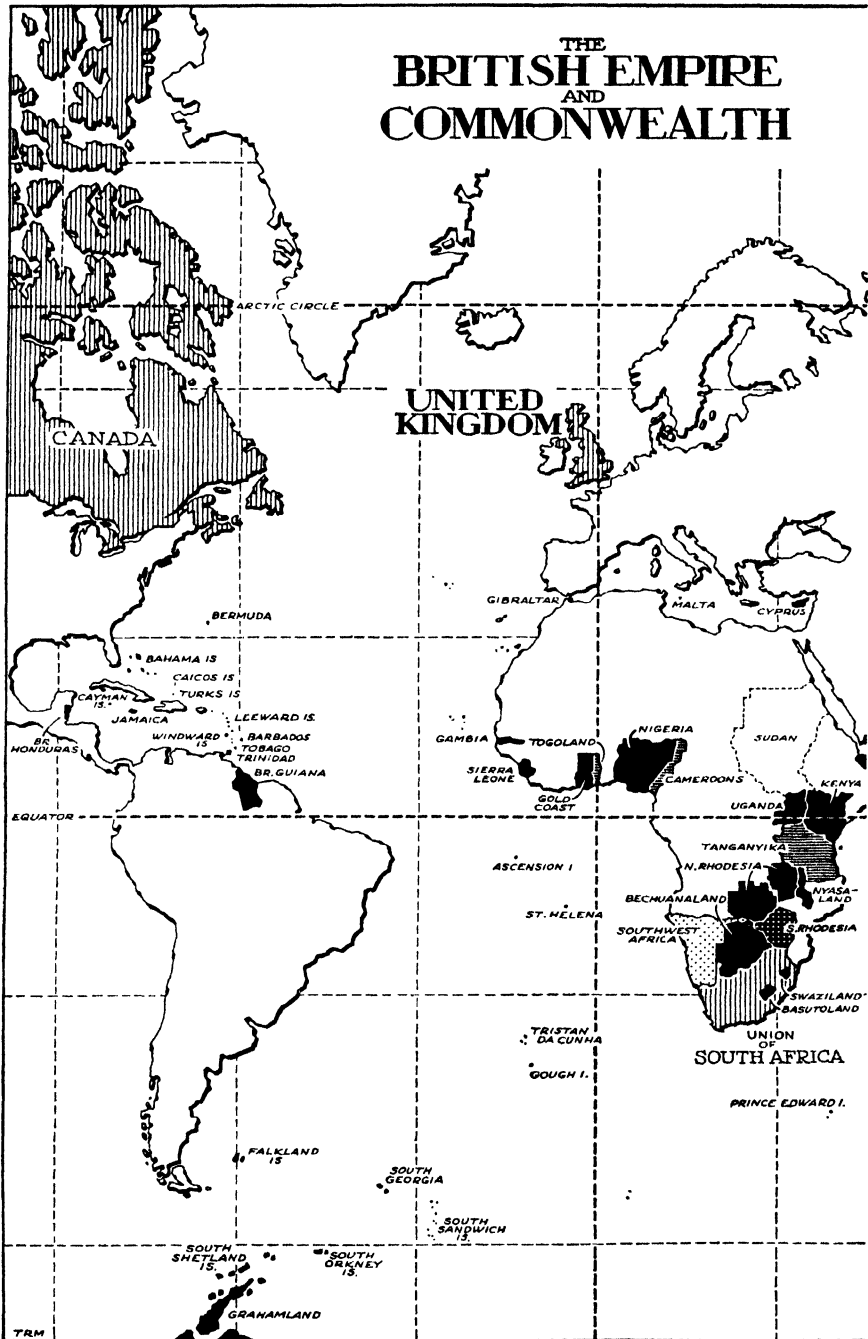
A unique phenomenon. The world has never before seen such a far-reaching, autonomous political aggregation as the Commonwealth of Nations. Writers have compared it with the empire of ancient Rome, but the two have no significant features in common. The Commonwealth of Nations today bears no resemblance to anything that has ever existed or ever been tried. In its extent, its diversity, and its loose political organization it is a unique phenomenon.

Its scattered character. But the Commonwealth of Nations does not include all the territories which owe allegiance to the British crown. There are numerous areas which still have colonial status. In Europe, for example, there are Gibraltar, Malta, and Cyprus; in North America, Jamaica, Bermuda, the Bahamas, and various other islands in the West Indies. In Central and South America, there are British Honduras, British Guiana, and the Falkland Islands. In the South Pacific, there are British Samoa, the Fiji Islands, North Borneo, New Guinea, and various small South Pacific islands. In Asia, the British possessions include Aden, Hongkong, Singapore and the Straits Settlements, and the Malay States. In Africa, the British territories include Rhodesia, Nigeria, Sierra Leone, Gambia, Uganda, Kenya, and Zanzibar together with various other colonies, protectorates, and trusteeship territories. The Egyptian Sudan is under the joint control of Great Britain and Egypt. Egypt, before the outbreak of the First World War, was technically a part of the Turkish empire but virtually under British suzerainty. When the Turks cast in their lot with the Germans, the British government declared a protectorate over Egypt and this status continued until some years after the close of the World War, when a series of Anglo-Egyptian agreements conceded to Egypt the rank of an independent state, subject to certain reservations.²

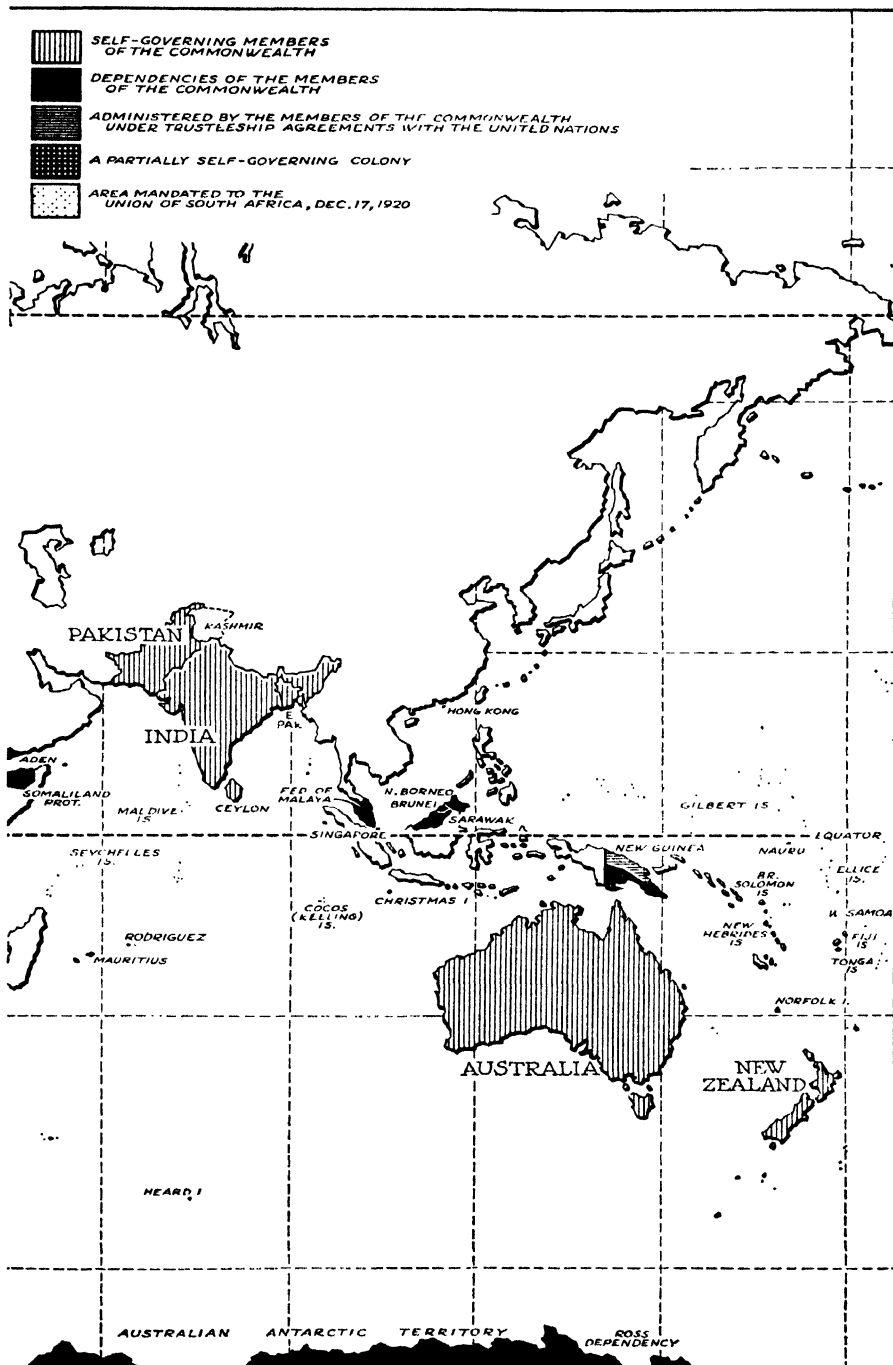
Nature of the imperial development. The growth of Greater Britain is one of the epics of history, yet it was not planned or premeditated. Rather

² The list above given does not include all British territories but only the more important ones. A complete enumeration with statistical data concerning them may be found in the annual volumes of *The Statesman's Year Book*.

THE BRITISH EMPIRE AND COMMONWEALTH



The British Empire



Drawn by Theodore R. Miller

and Commonwealth

it was accomplished in a prolonged fit of absent-mindedness. England expanded without a policy of expansion. A commercial and industrial nation by reason of geographical good fortune, she naturally became a maritime and naval power. Her merchants traded with distant lands; her people made settlements there; and her navy was able to protect them. It was not the British government that created the empire; it was the British people. The great exodus of Englishmen was not inspired or encouraged by the government. In English colonization the trader and the emigrant went first; the government came lumbering along in the rear. Someone has said that the British Empire was conquered by the Irish in order that it might be governed by the English for the benefit of the Scotch. That remark embodies an obvious exaggeration, yet it points to the fact that all three races have taken a hand in discovering, conquering, settling, governing, and exploiting this vast dominion over palm and pine.

THE OLD AND NEW BRITISH EMPIRES

The two great periods of empire-building. Historically the growth of the overseas empire falls into two general periods. The first extended from 1600 (when the British East India Company was organized) down to 1783, when the treaty of 1783 recognized the independence of the United States. During this era of nearly two centuries Great Britain conquered Canada from France, secured for her traders a free hand in India, and founded thirteen colonies along the Atlantic seaboard. The loss of these colonies was a seemingly irreparable disaster to the imperial cause, but it taught the British government some lessons that proved to be worth the cost. These lessons were turned to useful account during the second period (from 1783 to the present day) in which an even more extensive range of territories has been acquired. The later acquisitions have been made in a variety of ways—by discovery and colonization (as in Australasia), by conquest (as in Africa), and by the peaceful expansion of territories in which a foothold had already been acquired (as in Canada). As a result the Great Britain of today is vaster in extent and more populous than the one which was rent asunder by the American Revolution.

The American Revolution as a dividing point. The American Revolution is the most conspicuous landmark in the history of Greater Britain. It closed one era and opened another. It taught the mother country a lesson, as has been said, but not the lesson that most Americans would have expected England to learn from the happenings of 1776-1783. There is no basis for the common belief that the American War of Independence impelled Britain to give her remaining colonies a full measure of political freedom. The

colonies which did not revolt, but remained within the empire, obtained no substantial concessions in the way of self-government as an outcome of the Revolutionary War. Their political organization stood unaltered; their governors continued to be appointed from London and remained independent of colonial control. No British colony received a full measure of self-government for more than a half-century after the founding of the United States. The struggle for self-government had to be fought over again, as it was in Canada during the years 1835-1840.

What Britain learned from the Revolution. The lesson which Great Britain did learn from her experience with the thirteen American colonies, however, was in relation to the control of trade. Therein the British authorities rightly interpreted the underlying causes of the Revolution. It was a series of economic grievances that led the American colonists to rebel. No doubt there were some political grievances also, but these could probably have been remedied without an armed revolt. The American colonists did not take up arms because they wanted their governors to be responsible to the legislature, or because they desired manhood suffrage. They did not endow themselves with these things after the Revolution. What they resented was British interference with their trade and economic life. The British government, when the Revolution was over, appreciated the force of this grievance, and the remaining colonies were treated with a new liberality in matters of trade.

The new commercial policy. It was in this sense that the American Revolution paved the way for the upbuilding of a new British Empire. It sounded the death knell of the Navigation Acts. It gave a body blow to the whole mercantilist doctrine. As between economic self-determination and political self-government the former is the more important, although both logically go together. And Great Britain has now given both types of freedom to her dominions. Canada, Australia, New Zealand, South Africa, India, Pakistan, and Ceylon are today completely self-governing nations.

The diversity of states and races. The commonwealth and empire include political entities of many types, some of which are almost impossible to classify. There are self-governing dominions, colonies of various sorts, protectorates, protected states, trusteeship areas, and condominiums. These territorial units of government are racially as diverse as it is possible for a far-flung territorial entity to be. They comprise great areas with populations almost entirely of European birth or descent, such as Canada, Australia, and New Zealand. In others, such as Ceylon, Pakistan, and the Union of South Africa, the politically dominant races are of European ancestry, but there is also a large native element, outnumbering the Europeans. With this diversity in race,

language, religion, law, economic interests, and social traditions, it is not surprising to find that no two parts of the commonwealth are governed exactly alike.

BRITISH POSSESSIONS CLASSIFIED

It has already been pointed out that the Empire and Commonwealth can be divided into the self-governing parts called dominions or commonwealth countries and the subordinate areas called the colonies. But is it possible to make a more refined classification than this. All British territories may be arranged under seven principal heads:

1. India. India is unique because it has repudiated allegiance to the crown and become a sovereign republic while retaining its membership in the commonwealth.

2. Other commonwealth countries. The other members of the commonwealth include Great Britain and Northern Ireland, Canada, Australia, New Zealand, South Africa, Pakistan, and Ceylon.³ All are fully self-governing but are united by a common allegiance to the British crown and by association in the Commonwealth of Nations.

3. Semi-autonomous colonies. Southern Rhodesia and Malta are still technically crown colonies, but enjoy effective local autonomy and have responsible government. However, they are not independent as regards foreign affairs and certain other matters.

4. Crown colonies. This category includes a number of British dependencies which vary widely in the degree of self-government they have been given, but which, in the final analysis, cannot control their executive authorities, who are British-appointed governors responsible to the British government through the colonial office. Most of these colonies have legislatures; some are unicameral and others of the two-chamber sort. Frequently the membership of these bodies is mixed, partly appointed and partly elected. Some provide for a majority of appointed officials and in others the elected nonofficial group is larger. A few which are virtually nothing but military or naval bases, such as Gibraltar and Ascension, have no legislature at all. In others, such as Jamaica and Trinidad, an active political life exists with organized political parties struggling for control of the assembly and complete self-rule as an avowed objective.

5. Protectorates. A protectorate is a quasi-colony in which the protecting power controls the external affairs of the protectorate and may exert a good deal of authority over internal matters as well, depending usually upon the

³ The dominion status of India and Pakistan dates from August 15, 1947, when the Indian Independence Act went into effect, and that of Ceylon from February 4, 1948.

terms of treaties between the protecting power and the native chiefs or rulers. In fact, the British resident commissioner functions very much like a colonial governor. It is a characteristic of protectorates, however, that as much use as possible is made of indirect rule by making the native chiefs the administrators of justice, tax collection, and so forth. Most British protectorates are in Africa, but the Solomon Islands and the Federation of Malaya also fall into this category.

6. Trusteeship areas. A sixth category includes lands held under the authority of the United Nations as trusteeship areas. This scheme of a kind of international guardianship for dependent peoples dates from the days of the League of Nations. It was created to provide for the government of former German and Turkish colonies and subject countries which were not regarded as ready for immediate independence. It was held that they should not simply be turned into colonies of the victors but helped toward self-government. They were called mandates and assigned to mandatory powers which were to be responsible to the mandates commission of the League. The League was unable to enforce its authority over the mandates and in general they were treated like old-style colonies. Japan openly annexed her mandates as colonies when she resigned from the League. What is essentially the same system has been set up by the United Nations, and it remains to be seen if the trusteeship areas are to benefit more from international supervision than did the mandates. At present British and commonwealth trusteeship areas include the following, with the name of the trustee in parentheses:

New Guinea (Australia); Western Samoa (New Zealand); Tanganyika, part of the Cameroons and part of Togoland (the United Kingdom); Nauru (Australia, New Zealand, and the United Kingdom).

7. Condominiums. Finally, there are two areas that do not fall under any of the above headings. The Egyptian Sudan is neither a commonwealth country, a colony, a protectorate, nor a trusteeship area. It is under the joint rule of two powers, the United Kingdom and Egypt, and so is called by international lawyers a *condominium*. A similar joint control of the New Hebrides exists, the two powers in this case being Britain and France.

The Sudan condominium had its origin in the pacification of the region by an Anglo-Egyptian army under Lord Kitchener in 1899. Thereafter the governor of the Sudan was nominated by Great Britain and appointed by the khedive of Egypt. The higher administrative posts were filled by Englishmen and the lower by Egyptians until anti-British agitation by the latter led to their expulsion after 1924. Subsequently the Sudan became essentially a British protectorate, although the flag of Egypt continued to fly beside the Union Jack within the territory. Then in 1951 the condominium was repudiated

unilaterally by Egypt as an anti-British gesture and a mark of Egypt's burgeoning nationalism. This made little practical difference because in any case the Sudan was in process of rapid change in the direction of greater self-government. Eventually it may become an integral part of Egypt, or quite possibly, a commonwealth country.⁴

Dominion status. Among these varied territories the self-governing dominions are the most important and, to the student of government, the most interesting. Their self-governing status is no recent development. It does not date from the Statute of Westminster in 1931. In some cases, as in Canada, it has existed for nearly 100 years. But it was not a formalized status, recognized by a specific grant of autonomy by the British government. Any differences that arose from time to time were settled as the occasion seemed to demand, usually by allowing the dominions to have their way. From time to time, moreover, imperial conferences were held in London, attended by representatives (usually the prime ministers) of the dominions, and these conferences made various proposals concerning the relations between the dominions and the mother country. Most important among these were the recommendations made by the Imperial Conference of 1930 which led to the enactment of the Statute of Westminster in the following year.⁵

The Statute of Westminster: 1. Relation of the dominions to the royal succession. The Statute of Westminster, which has been termed the Magna Carta of the British dominions, includes three important provisions. In the first place it stipulates in its preamble that "inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations . . . it would be in accord with the established constitutional position of all the members of the Commonwealth . . . that any alteration in the law touching the succession to the throne . . . shall hereafter require the assent of the Parliaments of all the Dominions as well as of the British Parliament."

2. Disallowance abolished. Second, it provides that no law passed by a dominion parliament may hereafter be held invalid on the ground that it is repugnant to the laws of the United Kingdom or to any future act of the British parliament. Until 1931 it was the privilege of the crown to veto or disallow, on the advice of the British cabinet, any dominion statute. Such action had rarely been exercised; it has now disappeared. The governor-general,

⁴The British and Egyptian governments have agreed with Sudanese groups to permit the setting up of an elected assembly with a large measure of home rule and the eventual free choice of either independence or British or Egyptian connection. In the meantime foreign affairs remain under British and Egyptian control. The pact declares that self-determination will take place before the close of 1955.

⁵For a full discussion of this statute see K. C. Wheare, *The Statute of Westminster* (London, 1933). A concise account may be found in A. B. Keith, *The Governments of the British Empire* (New York, 1935), Chapter ii.

in each of the dominions, still gives the royal assent to acts passed by the dominion parliament, but like the king in Britain he gives it as a matter of course.

3. Dominion legal supremacy. Third, the Statute of Westminster provides that no law passed by the British parliament shall apply to any of the dominions except in cases where the dominion parliament has requested and consented to such legislation. Moreover any British statute or regulation now existing in the dominions, with certain exceptions, can be repealed or amended at will by the parliament of the dominion concerned. In other words any British dominion except Canada and Australia can now, by its own action, repeal or amend a constitution given to it by the British parliament. It is under this provision of the Statute of Westminster that Southern Ireland (Eire) revamped its constitution and finally took for itself a position of complete separation. In the case of Canada and Australia the various provinces and states which are included in these two dominions are deemed to have an interest in the division of powers between themselves and the federal government which is established by their existing constitutions. Hence it would not be equitable to permit their federal parliaments to amend these constitutions at will, to the detriment of existing provincial or state rights. Consequently it is agreed that the organic acts of the British parliament, on which the governments of these two federal dominions now rest, will not be amended unless the provinces or states included within the federations are protected against an involuntary loss of their existing powers.

Both Canada and Australia have been working for some time on proposals to permit the entirely domestic adoption of constitutional amendments, but both have encountered difficulties because of the "states' rights" of the Canadian provinces and the Australian states. The fear is that full amending power, including the power to change the provisions for amendment, might lead to federal centralization and the destruction of provincial authority. No doubt a way will be found eventually. New Zealand, which is not federal but unitary, has no such problems and at its request the British parliament passed the New Zealand Constitution (Amendment) Act, 1947, which transferred complete constitution-amending powers to the parliament of that dominion.

The crown in the dominions. The sovereign is the nominal ruler and chief-of-state in every commonwealth country except the Republic of India. In all of them, therefore, except India, the government is carried on in her name and through her personal representative, the governor-general. This official represents the crown only and has no connection or correspondence with the British government. Although the Statute of Westminster is silent

on the subject, it has long been the custom, as agreed at the imperial Conference of 1930, to appoint governors-general only upon the advice of the dominion concerned. In Australia, Canada, and South Africa, local citizens have been appointed to this office. The Republic of Ireland is no longer a member of the commonwealth and of course has no governor-general.

Appeals to the judicial committee of the privy council. The Statute of Westminster left it up to the dominions as to whether or not they would continue to permit appeals from their courts to the judicial committee of the privy council in London. Eire was the first to abolish such appeals, in 1933. Canada first abolished appeals in criminal cases and later, in 1949, ended all appeals. The Indian constitution which went into effect in January, 1950, abolished all appeals from India. South Africa followed suit in April, 1950, as did Pakistan in May. It would seem that the commonwealth-wide appellate jurisdiction of the judicial committee is another "link of empire" that is wearing thin.

British nationality. The question of nationality in this remarkable aggregation of states was bound to produce legal problems and anomalies. Laws on the subject were fairly logical and uniform throughout the commonwealth until Canada passed the Canadian Citizenship Act, 1946. After defining a Canadian citizen, the act stated: "A Canadian citizen is a British subject." Canada thus asserted the right to create British subjects. A commonwealth nationality conference was held in 1947 at which it was agreed to make the Canadian formula a general one. It was decided that each commonwealth country should define its own citizenship and that British subjects should be the total of all commonwealth citizens. Laws implementing this agreement were passed by all except South Africa and India.⁶ The British Nationality Act (1948) is the most inclusive of all. Not only Indians and South Africans but also citizens of the Irish Republic may enter Great Britain, as may citizens of the other commonwealth countries and colonies, vote and stand for parliament on a footing of complete equality with the native-born British.

By the end of 1948 it looked as if a common citizenship would provide another commonwealth bond, but South Africa broke the pattern in her Citizenship Act (1949). This defines South African citizenship but makes no mention of any commonwealth citizenship. Actually, as in Ireland, British subjects from other countries are not treated as aliens for purposes of entry but they must be naturalized before they can vote.⁷

⁶ Ireland was no longer a commonwealth member. Under the Irish Citizenship Act (1936), Irish citizens were not British subjects. Arrangements were made, however, with the commonwealth countries for reciprocal privileges whereby their citizens would not be treated as aliens in Ireland and vice versa.

⁷ For a treatment of this legally complex matter see K. C. Wheare, "Is the British Commonwealth Withering Away?" *Am. Pol. Sc. Rev.*, XLIV, 3 (Sept., 1950), 545-555.

CANADA

Each of the self-governing dominions has a constitution, or what is the equivalent of a constitution, in other words, a comprehensive act of parliament on which its government is based. Canada is the most populous of these dominions. Its population is between 13,000,000 and 14,000,000, which is considerably less than the population of New York State. Almost one-half of the people are of French descent, for the older sections of Canada were originally settled by colonists from France. Considerably more than one-half of Canada's population lives within 100 miles of the United States border.

Its constitution. The Dominion of Canada was established in 1867 under the provisions of the British North America Act which (with various amendments) still serves as a federal constitution. It was framed by a conference under the leadership of the Canadian premier, Sir John A. MacDonald, who drew much of his political philosophy from Alexander Hamilton. If MacDonald was the father of the Canadian constitution, Alexander Hamilton is entitled to be called its grandfather. This is because the chief features of a highly centralized federal government which Hamilton proposed to the Philadelphia Convention in 1787, but which failed to gain favor there, were incorporated by MacDonald into his draft of the British North America Act.^a

Its interest to American students. There are three reasons why American students should know something about the governmental system of Canada. Geographical proximity suggests interest, or should do so—and Canada is nearby. In the second place the political problems of the two countries are fundamentally alike, although the attempt to solve them has been made in quite different ways. Finally, although Canada is a member of the commonwealth, her political institutions and life are being strongly influenced by the United States. One might, perhaps, generalize by saying that in the government and political life of Canada most of what has been imposed from the top is British; but most of what has worked in from the bottom is American. This is especially true of party organization and practical politics.

Its general nature. Under its present constitution the government of Canada bears some resemblance to that of the United States in that there is a formal division of powers between the federal and the provincial governments. Matters of nation-wide importance are placed within the jurisdiction of the federal authorities; while those of a local character are left to the provincial governments. The British North America Act of 1867, like the Constitution of the United States, contains a definite enumeration of these powers, but in one essential feature the two documents stand in contrast. In

^a See William B. Munro, *American Influences on Canadian Government* (Toronto, 1929), especially pp. 18-22.

the United States all powers not definitely granted to the federal government remain with the states; in Canada all powers not definitely reserved to the provinces go to the central government. This difference, however, is not so great as it might appear to be. In the United States the courts, by judicial interpretation, have strengthened the federal government at the expense of the states; in Canada they have strengthened the provincial governments at the expense of the dominion. The balance of authority is therefore not widely different in the two countries.

The governor-general. The titular chief executive in Canada is a governor-general appointed by the crown for a five-year term. The appointment had always gone to a member of the British nobility until the designation in 1952 of a Canadian, the Rt. Hon. Vincent Massey. The governor-general performs substantially the same duties as those imposed upon the king in England. He summons and dissolves the dominion parliament, gives the assent of the crown to legislative measures, and makes appointments to office—all on the advice of his ministers. These ministers are responsible to the Canadian House of Commons. Canada maintains a high commissioner in London as a medium of communication with the imperial government. High commissioners also represent the Canadian government in the other dominions. Canada also has her own diplomatic representatives in Washington and at several other capitals.

The cabinet. The Canadian political system closely follows the English model in providing for a responsible cabinet. This cabinet is chosen, as in England, by a prime minister whose responsibility to the House of Commons is exactly the same as at Westminster. So the real chief executive of the dominion is not the governor-general but the prime minister, who is invariably the leader of the majority party in the Canadian House of Commons. Each member of the cabinet must have a seat in the Canadian parliament and the whole cabinet must resign, as in England, whenever it loses the confidence of a majority in the House.

The dominion parliament. The parliament of Canada consists of two chambers, a Senate and a House of Commons. Not having a peerage (and having no desire to create one) it was impracticable to model a Canadian Senate on the British House of Lords. Nor was it thought advisable to follow the example of the United States to the extent of having senators chosen by the various provinces.⁹ It was decided, therefore, that the Canadian Senate should be composed of ninety-six members appointed for life by the governor-

⁹ It will be remembered that at the time the Canadian constitution was being formed (1867) the United States Senate was not regarded as a striking success. There was a widespread feeling that the equal representation of the states in the Senate had helped to make a peaceful settlement of the slavery issue impossible.

general on the advice of the prime minister.¹⁰ Alexander Hamilton, by the way, had urged in 1787 that the United States Senate ought to be composed of members appointed for life by the federal government. The various Canadian provinces, unlike the American states, are not represented equally in the Senate. Ontario and Quebec each have twenty-four senators, while the other provinces have quotas ranging from four to ten.

The Canadian Senate. Like the Senate of the United States the Canadian upper chamber has concurrent legislative power with the lower house except as regards money measures. There is no provision in Canada, as in Great Britain, for solving a deadlock between the two chambers by having the Commons re-enact a measure three times. In the event of serious deadlock between the Senate and the Commons the law provides that the governor-general may recommend to the crown that either four or eight new senators be appointed. In 1873 an attempt was made to invoke this provision, but the crown refused because the crisis was not acute. Today, of course, the crown would act automatically at the prime minister's request. In practice, the Senate seldom rejects important bills. Every so often a demand is made for reform of the Senate, but it is unlikely that any important change will be made unless really serious difficulties develop between the two houses. When one party has been in power for a long period the Senate is composed chiefly of its appointees and deadlock might ensue if there were a sudden overturn in the House of Commons. One can imagine the present Senate, almost entirely Liberal, rejecting socialist bills introduced by the Coöperative Commonwealth Federation party if it were to gain office. In such a case, the creation of eight new senators would be quite insufficient to break the deadlock. Nothing of this sort has yet happened, and the Senate exists quietly without stirring even a ripple on the surface of Canadian politics. It actually has less practical importance than the House of Lords. Appointments to it are made chiefly to reward wealthy men who have supported their party with contributions and influence.¹¹

The House of Commons. The Canadian House of Commons bears a close resemblance to the American House of Representatives. Its members are elected from parliamentary districts or constituencies—one from each. These constituencies are approximately equal in population and redistricting takes place (as in the United States) after every decennial census. The total membership in the House of Commons at the present time is 262.¹² The maximum

¹⁰ The number now is 102 with the addition of six for Newfoundland.

¹¹ On the organization and powers of this chamber the best book is Robert A. McKay, *The Unreformed Senate of Canada* (Oxford, 1926).

¹² Formerly Quebec was always given 65 members and a quota established for the other provinces by dividing 65 into the population of Quebec. In 1947 Quebec's representation was increased to 73 and the total size of the House to 255. Subsequently 6 members were added for Newfoundland. At present, therefore, there are 262 members, one of whom represents the Yukon. The size of an election district is determined by dividing 261 into the total population of Canada excluding the Yukon.

term during which a House of Commons may sit is five years, but the House may be dissolved at any time by the governor-general on the advice of the prime minister. Such dissolutions, however, have been less frequent than in England.

How its members are elected. As respects the suffrage, any citizen twenty-one years of age or over, male or female, is entitled to vote after one year's residence in Canada provided he (or she) has resided in the constituency for two months. And any qualified voter may become a candidate, for election. There are no primaries for the selection of candidates, as in the United States. Nominations are made, in each constituency, by party conventions. The voting is by secret ballot and the ballots bear no party designations.

Its powers. In Canada, as in England, the House of Commons is the real pivot of legislative power. It controls the cabinet. All financial measures must originate in the House, and as a matter of practice most other measures originate there also. Bills are introduced, referred to committees, debated and voted upon, and then go to the Senate for concurrence. A distinction is made, as in the Mother of Parliaments, between public and private bills. There is a speaker, but the English tradition of re-electing him to his office so long as he remains a member of the House is not followed in Canada. When a new government comes into power it elects a speaker from its own ranks. The standing rule of the British House of Commons that no proposal to spend public money will be considered unless it is introduced in the name of the crown (that is, by a member of the cabinet) has been adopted in Canada, and this gives the cabinet a large measure of control over the whole field of public finance.

Political parties in Canada. Political parties exist in Canada as in all other countries having free government. The two chief parties call themselves Liberals and Progressive Conservatives, but there are two smaller parties which espouse more radical programs. In their organization and methods, the Canadian political parties have borrowed considerably from the United States. For example, they have national party conventions from time to time, political platforms, party campaign funds, and much of the other paraphernalia of American politics. The Liberals have drawn their main strength from French-speaking Quebec which plays a rôle of steadfast partisan loyalty in Canadian political life somewhat similar to that traditionally assumed by the "Solid South" in the United States. The programs of the two chief parties, however, do not differ greatly on fundamental questions of national policy.

The provinces. Canada is a federation of provinces, of which there are now ten, together with two federal territories.¹³ Each of the ten provinces has

¹³ Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta, British Columbia, Newfoundland, and the Northwest and the Yukon Territories. The provinces are free to change their own constitutions except as regards the office of lieutenant-governor.

its own provincial government consisting of a titular chief executive who is called lieutenant-governor, a provincial prime minister and cabinet, and a provincial legislature. The lieutenant-governor is appointed for a five-year term by the governor-general on the advice of the federal cabinet. Most of the time he is simply the local representative of the crown and acts automatically on the advice of the provincial prime minister. However, upon occasion he may be advised by the governor-general (on instructions from the Canadian prime minister) to reserve a bill for consideration by the federal government. This is very rarely done, but several acts of provincial legislatures have been disallowed by the Canadian government within a year of their enactment because they were confiscatory of property or personal rights or infringed upon federal subjects.¹⁴ The legislature, which consists in nine provinces of a single chamber, is elected by universal suffrage.¹⁵ Party lines are substantially the same in provincial as in federal politics.

AUSTRALIA

Early history of Australia. In point of population, Australia comes next among the self-governing dominions. The island became a British possession by settlement early in the nineteenth century. It was at first deemed to be of little value and was used as a penal colony. Indeed, it was established to provide a penal settlement as Virginia was no longer available. In time, however, colonies of free settlers and of a few liberated prisoners were established in different parts of Australia and these colonies were given a system of partial self-government which eventually widened into complete autonomy. There were six of these colonies and various attempts were made during the last half of the nineteenth century to unite them into a federation; but the project did not succeed until 1901, when the Commonwealth of Australia came into existence by action of the British parliament at the request of the colonial governments. The constitution of the commonwealth was ratified by the people and it cannot now be changed except by the assent of a majority of the voters in a majority of the states. The component parts of the commonwealth are known as states (not provinces), and there are six of them together with certain areas which have the status of territories and are administered by the government of the commonwealth.¹⁶

General structure of its government. In general the government of the

¹⁴ A recent use of this power was in connection with an Alberta act regulating the publication of news and, in the view of the federal government, interfering with the freedom of the press.

¹⁵ In Quebec alone there are two chambers—a legislative council and a legislative assembly, both elective. Nova Scotia had a legislative council until 1927 when it was abolished by provincial act. There has been no disposition in the Canadian provinces to revert to the two-chamber system.

¹⁶ The six states are New South Wales, Victoria, Tasmania, Queensland, South Australia, and Western Australia. The territories include the northern portion of the island together with various areas (for example, Papua and the Australian Antarctic Territory).

Australian Commonwealth somewhat resembles that of Canada although there are a few important differences. A governor-general and a federal cabinet form the executive branch of the government. The governor-general is appointed by the British crown on the nomination of the Australian cabinet. There is a parliament of two chambers called the Senate and the House of Representatives. But the Australian Senate, like that of the United States, is based upon the principle of state equality. It consists of thirty-six senators—six from each state irrespective of population. And the senators are elected, as in the United States, by state-wide popular vote. The Australian House of Representatives also follows the American model in that it is composed of members elected from districts which are approximately equal in population, one from each. Universal suffrage has been established throughout the commonwealth. Each of the six Australian states also has its own government, which, in a general way, is similar to that of a Canadian province. But in apportioning powers between the federal and provincial governments the Australian constitution reserves to the states all powers not definitely given to the central government.

SOUTH AFRICA

The Union of South Africa. The Union of South Africa consists of four provinces (Cape Colony, Natal, the Transvaal, and the Orange Free State) which were united in 1910. This union differs from the federations of Canada and Australia in that it does not rest upon an enumerated division of powers between federal and provincial authorities. The South African constitution gives virtually full and complete authority to the Union parliament. But it reserves a little jurisdiction to the provinces and also provides that the Union parliament may delegate to the four provincial governments such powers as it sees fit. In any event all laws enacted by the provincial governments must have the approval of the Union authorities before they become valid. The South African Union, therefore, is a federation in form only. It is the sort of federation that Alexander Hamilton would probably have established in America if he had been given his way in 1787.

The South African government consists of a governor-general, an executive council, and a bicameral legislature. The Senate is made up of forty regular members, eight chosen by the legislative council of each province and eight appointed by the governor-general on the advice of his cabinet—all for ten-year terms.¹⁷ In addition there are four senators elected from the four electoral areas into which the union is divided, but these are chosen for five-year terms only. The lower chamber, or House of Assembly, is made up of

¹⁷Of the eight appointive senators, four are chosen to represent "the reasonable wants and wishes of the non-European areas." They are always Europeans, however.

members elected from single districts, and special provision is made for the representation of the native races. Each of the four provinces is governed by an administrator who is appointed by the governor-general on cabinet advice, and an elective legislative council.

OTHER OVERSEAS POSSESSIONS

The partly self-governing colonies. It would take a whole volume to describe the government of those British territories which have a large amount of self-government but not a full measure of it. Southern Rhodesia, for example, enjoys virtually full autonomy except for certain restrictions placed upon its government in the interest of the native population. Malta has full self-government except as regards certain reserved matters such as defense, coinage, external trade, and immigration. In Jamaica the elective representatives of the people control the legislative branch of the government but do not control the executive. British Honduras, another colony in the Western hemisphere, did not secure an elected majority in its legislative council until 1954, and St. Helena (famed as the last home of Napoleon) has no legislative council at all. From Malta to St. Helena, therefore, the various territories run the whole gamut of colonial government, with all degrees of self-determination and democratic control. But whatever the measure of home rule, or the lack of it, British suzerainty has always aimed at the protection of the native races, the abolition of slavery, the reign of law, the maintenance of order, and the training of the people in the art of government.

The protectorates. Britain has several protectorates, and in such territories there is sometimes a great gulf between theory and fact. Ostensibly a protectorate is not subject to control as regards its own internal affairs; it is controlled only as respects its foreign relations. But the fact is that internal affairs and foreign affairs cannot always be sharply differentiated, and the protecting country usually gives itself the benefit of any doubt in the matter. Its minister-resident, or resident-general, or whatever he may be called, acquires the habit of tendering advice to the native rulers on all manner of problems, both internal and external. He becomes, to all intents, the directing factor in the government of the protectorate. The status of a protectorate is not usually permanent; often it is merely a prelude to annexation, but it has sometimes ripened into independence.

Spheres of influence. Protectorates should not be confounded with "spheres of influence." A sphere of influence is a backward area in which the interest of some civilized state has become recognized as paramount. When two European countries find themselves engaged in rivalry for the exploitation of some undeveloped territory, and drifting into open rupture because of

this rivalry, they try to reach an agreement dividing the territory into spheres so that each of the exploiters may keep from interfering with the other. Some years ago, for example, Great Britain and Russia informally agreed to delimit spheres of influence in Irán (Persia), but in 1942 these two powers by treaty bound themselves to respect Irán's territorial integrity, sovereignty, and political independence. As respects countries which are not immediately concerned, agreements with respect to spheres of influence have no binding force. Nor do such agreements establish any right of governmental intervention, although the dominant country sometimes imposes a directing hand on the political affairs of the territory in question.

IMPERIAL CONTROL

The supremacy of parliament. In legal theory the British parliament has supreme and unfettered power over all British territories, no matter what their status. It is not permanently bound by the provisions of the Statute of Westminster. But as a matter of fact it would not and, practically speaking, could not venture either to repeal this statute or the organic law of any self-governing dominion save on request from the government or governments concerned. So here we have, once more, an illustration of the wide divergence which exists between the law and the usages of British government. Parliament retains the fiction of complete supremacy, but in the case of the dominions has surrendered the substance of legislative power.

COMMONWEALTH BONDS

1. Family sentiment. What then holds the Commonwealth of Nations together? Why do Canada and Australia and even India remain in the commonwealth when Burma and the Irish Republic have resigned? The reasons are varied and complex. In the case of the old British colonies of settlement, Australia, New Zealand, and Canada (in part), there is a feeling of belonging to the British "race," of sharing a family tie. The magnificent British literary heritage, all that is involved in a common tongue, helps to strengthen this feeling. These commonwealth nations have British parliamentary institutions, and the common law of England is the basis of their laws and civil freedoms. They feel that they share in the colorful stream of British history. These sentimental bonds may be very strong indeed, however unimpressive they may appear to those who do not share the sentiment. They are especially strong in the case of New Zealand, for New Zealanders tend to regard their country in some respects as an English county adrift in the Pacific.

2. Economic ties. The economic ties are important too. All share volun-

tarily in an "imperial" preferential tariff scheme whereby commonwealth goods are received throughout the empire at a lower rate than is accorded foreign goods. Except for Canada, all are in the sterling area, their currency tied to the pound sterling. Without such arrangements their external trade, in some cases, would be affected seriously.

3. Defense. That the commonwealth connection implies the use of British forces for defense is a good "sales point" for the commonwealth. For many years it enabled Canada to get along practically without a defense budget, secure in the protection of the United Kingdom on the one hand and the United States on the other. No doubt some commonwealth nations feel more secure in a dangerous world because of their alliance. All commonwealth countries have their own forces and no British troops are stationed in any of them without the consent of the country concerned. There is some coordination of planning at the staff level between various commonwealth countries and arrangements for the standardization of equipment have been made in some cases.

The British connection was even more valuable in the days when the queen's navy, undisputed, ruled the seven seas. It may be noted that Australia and New Zealand are especially sensitive to naval strength in the Pacific, and that Australian spokesmen have indicated recently that they would welcome a closer connection with the United States—even some kind of treaty relationship. No doubt Australian defense considerations were involved in this proposal.

4. Commonwealth institutions and organs: the imperial and commonwealth conferences. It is puzzling to students of the Commonwealth of Nations to find so little in the way of institutional connection between them. Years ago there were those who foresaw the disintegration of the empire unless common institutions were created. Imperial federation was advocated with an imperial parliament to handle subjects of general interest. In actual fact, the trend has been all in the other direction. Apart from the high commissioners, those intra-empire diplomats, and the constant interchange of views between the several premiers by means of telephone and cable, there is nothing now but the occasional informal conference by way of a common organ. Starting in Queen Victoria's day, at the time of her first jubilee in 1887, a series of imperial conferences were held for the interchange of views between the United Kingdom and dominion governments. These were formal meetings, usually attended by all the prime ministers, to discuss common problems. They were held not less often than every five years and sometimes at shorter intervals. The rule was: one government, one vote; and to be adopted, a resolution had to have unanimous support. The conferences were purely

consultative and had no legal authority, but as their unanimous resolutions represented the agreement of the premiers of the several countries and as they were nearly always able to secure the compliance of their respective legislatures, an imperial conference resolution normally resulted in appropriate action in the various dominions and at Westminster. Since 1937 there have been no more imperial conferences, so called, but the same functions have been performed by a series of commonwealth conferences, some attended by the ministers, and some by other representatives of the dominions to discuss specific problems.

There are a few technical committees organized on a commonwealth basis that meet regularly to consult on problems in their special field. These include the Commonwealth Economic Committee, the Executive Council of the Commonwealth Agricultural Bureau, and the Commonwealth Shipping Committee.

None of this prevents the commonwealth countries from exercising all the powers of fully sovereign states. As such they exchange diplomats with other countries and sit as full members of the United Nations as they did in the League of Nations.

INDIA

For over 300 years the huge Asiatic subcontinent known as India was under British rule in whole or in part—first indirectly through a commercial company and later through direct governmental control. After 1887 imperial patriots were fond of calling it “the brightest jewel in the Imperial Crown.” Now India is an independent republic, or rather two republics, called India and Pakistan, the larger of which, as already mentioned, has renounced allegiance to the British crown but remains a member of the Commonwealth of Nations. The story of India is a fascinating one and its development from the days of the Mogul Empire and “John Company” to the present is unique in British imperial history.

How England obtained her first foothold in India. England’s interest in India dates from the chartering of the East India Company, a body of commercial adventurers desiring to trade with the Orient. This company, in 1600, was given wide powers, including the right to acquire territory and to make regulations for the government of such acquisitions.¹⁸ Although its chief activities were commercial, the East India Company soon found it desirable to secure, by purchase from the native potentates, various tracts of land immediately surrounding its trading posts or “factories.” These land holdings were gradually extended by further treaties and purchases until the company

¹⁸ The company’s first objective was to get a toe-hold in the “spice islands” held by the Netherlands East India Company. The Dutch repelled this attempt, so the British turned their attention to the Indian mainland.

became the owner of large territories in which it set up its own civil government. The East India trade turned out to be very profitable and in some years yielded dividends of 100 per cent; hence the company's operations were rapidly extended to many parts of the peninsula. Large stores of valuable merchandise were concentrated at various points and had to be protected. The Mogul Empire, the result of Moslem conquest, was falling to pieces when the British arrived in India. Disorder was general and savage tribal raids were frequent. The company really had little choice but to protect its property by its own efforts or else to pack up and leave. Accordingly it inaugurated the policy of maintaining, at each of its posts, a small garrison of Englishmen, drilled and officered in military fashion. And with the rapid increase in the number of trading posts these garrisons eventually gave the company control of a sizable army.

The conflict with the French. In due course, however, rival exploiters of the trade came into the field, more particularly the French East India Company which was organized in 1664. This company also established trading posts and warehouses in India, sometimes not far from the English settlements. Similarly, the French entered into negotiations with the native rulers and secured control over various tracts of territory. Like the English, moreover, they stationed garrisons to protect their trading operations. But this policy of keeping constabularies in India proved rather expensive and after a while both companies found it cheaper to hire and train native troops. They found that these natives made good soldiers when drilled and commanded by European officers.

The outcome in 1763. So both the English and French East India companies soon had large native armies on their hands. And of course these armies had to have something to do. Mercenaries are unprofitable unless they can be kept employed. In this way the two companies were led into intrigues, secret treaties, alliances, and finally into open warfare. So the whole peninsula became a cockpit in which the two European commercial companies fought their duel for supremacy. The issue was decisively settled by the outcome of the Seven Years' War, for by the Treaty of Paris (1763) France agreed to withdraw from India, reserving only a few small trading posts. The British East India Company, meanwhile, clinched its hold upon the country and before long it acquired the right to collect the taxes and to administer justice throughout large areas. From a trader in spices and dyes, the Great Company became a ruler of territories, thrones, and destinies.

Indian administration after 1763; the Regulating Act (1776). Up to this point the British government had assumed no direct share in the administration of India. But the powers and jurisdiction of the company had

now become so extensive that some supervision by parliament seemed to be necessary, and in 1776 parliament passed a general statute known as the Regulating Act which provided that a governor-general, appointed by the crown, should be stationed at Calcutta with an appointive council to assist him. This was the first of a long series of enactments whereby the British parliament steadily widened its control over India. In 1858, following the Sepoy Mutiny, this control became complete.¹⁹

But the desire for self-government in India became more articulate during the closing years of the nineteenth century. It found expression through the Indian National Congress, an unofficial body of delegates collected from all parts of the country.²⁰ In response, the British parliament enacted a new constitution for India in 1919, with provision for an Indian parliament, but with various limitations on its legislative authority. Later, in 1935, this was replaced by a more liberal Government of India Act which provided for the establishment of a federal government in India with an opportunity to include the native states if the latter so desired. A division of powers between this federal government and the governments of the provinces was marked out by the act, and the latter were given virtual autonomy within their own allotted sphere of authority. But the proposed federal organization encountered vigorous opposition in India and never went into effect. As a further concession the British, in 1940, offered to give India full dominion status as soon as possible after the close of the war, and in keeping with this promise the Labor government sent out another commission to negotiate the details. It found, however, that the leaders of the Hindu majority and the Moslem minority could not be brought into agreement. The latter insisted on a separate State of Pakistan made up of two unconnected areas (several hundred miles apart) in which there are Moslem majorities.

In clarification of the following paragraph it ought to be explained that British India, from an administrative standpoint, had included three types of territory, namely, governors' provinces, chief commissioners' provinces, and native states. The first-named received a large degree of local self-government under the Act of 1935, the second had been ruled by commissioners appointed by the governor-general, while the third had been administered by native rulers under a limited degree of British supervision. In these areas there is a population of nearly 400,000,000, of which approximately 260,000,000 are Hindus; nearly 100,000,000 are Moslems, while the rest are Sikhs, Christians, and other groups. Representing the majority, the Indian National Congress had pressed for an all-inclusive central government, while the Mos-

¹⁹It was not until 1877, however, that Queen Victoria was proclaimed Empress of India.

²⁰The leading spirits in this movement were often Indians who had gone to English universities and there had learned the inspiring story of the growth of British freedom.

lem League, representing the chief minority, had been equally insistent on a separate status for those areas in which the Moslems have a majority.

In the end it was decided to pass the whole problem to the people of India themselves, and at the close of 1946 a constituent assembly was set up to formulate a constitution for the whole of India as well as for the individual provinces. During the interim British administration continued, but a deadline was set, and on August 15, 1947, the Indian Independence Act went into effect, the British-controlled government of India transferred its powers to the native authorities in Delhi and Karachi, the Union Jack was lowered for the last time, and the new flags of India and Pakistan took its place. The act provided for the partition of the subcontinent into India, chiefly Hindu, and Pakistan, chiefly Moslem in population, and made a similar division in the constituent assembly. The India section completed its work in time to have the Indian constitution go into effect in January, 1950.²¹ The Pakistan assembly was still at work in 1952 drafting its fundamental law.

As soon as the British *raj* had left, brutal riots took place. There were mass murders of Moslems by fanatical Hindus, and vice versa, but order was gradually re-established. Most of the princely states joined either India or Pakistan. There was serious trouble in only two cases. One of these concerned the great northern principality of Kashmir, claimed by both republics. What amounted to a small war broke out in this country but concluded with an armistice and negotiations. The other case involved the large and prosperous state of Hyderabad in the heart of India which was simply occupied by the Indian army and annexed without its consent. Of all the European possessions in India there remained only Portuguese Goa on the west coast and four French towns.²²

The 1950 Indian constitution. The Indian constitution is a long and complicated document.²³ In line with the policies of the Congress party it is secular in nature and ignores the principle of "communalism," that is, separating voters according to religious affiliation.²⁴ The only exception to this rule is the provision that Anglo-Indians, Scheduled Castes (former "untouchables") and Scheduled (backward) Tribes be given special representation for a period of years.

Its bill of rights. It has a bill of rights with the usual guarantees as well

²¹ This constitution is essentially the federal parliamentary type we have described in the other dominions. It provides for an indirectly elected president instead of a governor-general as nominal executive. The bicameral legislature has a Council of States rather like the United States Senate and a House of the People. There is an extensive bill of rights.

²² See below, p. 529.

²³ It is interesting to note that its chief draftsman was Dr. B. R. Ambedkar, by origin an "untouchable."

²⁴ The main excuse for communalism was the presence of the large Moslem minority, most of whom are now Pakistanis.

as provisions designed to abolish the disabilities suffered by the "untouchables." The entire bill of rights may be suspended by presidential action under a proclamation of emergency with the subsequent approval of parliament. Although English has long been the *lingua franca* of India, it is to remain in official use only until 1965 and then be replaced completely by Hindi, the present language of a minority of Indians. In line with modern practice, there are provisions as to the establishment of an equitable economic system which will require legislation to become operative. The Hindu religion is the obvious inspiration of provisions prohibiting liquor and the killing of draft and milch cattle.

Governmental structure. India is a federation but a highly centralized one, with residual powers going to the union and a remarkable provision enabling the federal government to become virtually the sole government in an emergency. Under a presidential proclamation of emergency not only is the bill of rights suspended, but the president—really, of course, the prime minister and cabinet—may issue decrees enforceable in any state. The federal parliament, too, may then legislate in matters ordinarily reserved to the states. An emergency period may be extended beyond two months only with the approval of both chambers of parliament. Even without the proclamation of an emergency the union parliament can legislate on matters reserved to the states, under certain conditions.²⁵

The states. There are now twenty-eight Indian states.²⁶ They are of three classes, A, B, and C, corresponding to the former British classification of governors' provinces, native (princely) states and commissioners' provinces. Part A states have a governor appointed by the president of India. They have elected legislatures with a responsible ministry, but the governor is more than an "uncrowned king." He represents the federal government and has some discretionary powers apart from his ministers. He can also reserve a bill for federal assent. Part B states are governed in the same way as those of the A category. Their historical origin as princely states has led to the nominal difference of calling their governors "rajpramukhs." In some cases the former rajah or maharajah was made the first rajpramukh. Part C states are backward areas without local self-government. Their affairs are administered by the union government through a chief commissioner, a lieutenant-governor or the governor or rajpramukh of a neighboring state.

The president. The president, as is always the case in a parliamentary democracy, is an elected "constitutional monarch" and always acts officially on

²⁵ (1) If the Council of States so directs by a two-thirds majority; (2) if two or more states agree that it be done in their case; (3) if required by a treaty or other international agreement.

²⁶ A twenty-ninth state is now (1953) in process of formation. It is Andhra, consisting of about half of the state of Madras and is the first Indian state to be formed on purely linguistic lines. Its 20,000,000 inhabitants speak Telegu instead of the Tamil tongue of the other Madrasis.

ministerial advice. He is elected for five years by a college consisting of both federal chambers plus all state legislators, by single transferable vote.

The government. The ordinary parliamentary form of a council of ministers is used. The prime minister is chosen by the president, the former of necessity being someone who has the confidence of the House of the People. The prime minister then picks the other ministers.

The legislature: Council of States and House of the People. The upper chamber is called the Council of States. It has a maximum of 250 members who serve for six years, one-third retiring every two years. Twelve are appointed by the president for distinction in literature, the sciences, and so forth. The remainder are elected by a college consisting of the members of the state legislatures (or the lower chamber only if the state legislature is bicameral). The single transferable vote is used.

The lower chamber or House of the People has a maximum of 500 members elected for a five-year term. It has the power of the purse as well as the ability to make and unmake ministries and is clearly the more important part of the legislature.

Constitutional amendment. An interesting feature of the Indian constitution is the amending provision, or rather provisions, for there are several methods. As regards fundamental, structural matters (executive and legislative powers and the like) amendment is difficult. An amendment in this field must pass both chambers of the union parliament followed by ratification in not less than half of the states in the A and B categories. Less fundamental provisions may be amended by absolute majority of the members of each federal chamber, providing those who vote for the amendment constitute two-thirds of all present and voting. A few minor provisions may be amended by ordinary statute.

How the Indian constitution actually works. It is still too soon to know just how the new Indian constitution will operate in practice. Certainly the vast Indian electorate, a majority of whom are illiterate, must learn and learn quickly their political ABC's if the Indian democracy is not to degenerate into an oligarchy.²⁷ At any rate the electorate has exercised the franchise. At the first elections held in the winter of 1951-52, 106,000,000 valid ballots were cast out of a possible maximum of about 176,000,000. In these elections the Congress party emerged easily the winner, gaining 364 out of 480 seats in the House of the People and ensuring Pandit Nehru's continuance as prime minister.

²⁷ Nehru sees this danger as unavoidable. In a speech made at the eleventh congress of the Institute of Pacific Relations, held at Lucknow, October 3, 1950, he put it this way: "We have arrived at a stage when we have to run. Walking is not enough—and in running we tumble and fall and we try to get up again. It is no good anybody telling us to walk slowly. . . . It involves risks and dangers but there is no help and no choice for it, for there is a torment in our minds . . ."

But there are disquieting aspects to the Indian political scene. Education is still the privilege of the few and these few are bound to dominate the administration for some time to come. Communalism, although ignored in the constitution, may still cause citizens to vote not for a national party program but for a candidate who has the correct racial, religious, or language affiliation. This could easily make genuine responsible government impossible because it would destroy the parties or turn them into minority pressure groups and mean that governments would have to be constituted by alliances of expediency between several of these permanent minorities. There is also the danger that social unrest may become serious if the villagers are educated in the techniques of political action before the government has had time to relieve their miserable living conditions. The press of India tends to be irresponsible and inflammatory. As literacy increases so does the potential audience of this press.²⁸ Demagogues may easily be recruited from the ranks of the frustrated "intellectuals" who have been soured by failure to attain the positions they believe they merit.

So far the Congress party under the moderate leadership of Pandit Nehru has given a measure of stability to Indian politics. It remains to be seen if this will continue to be the case.

The future of the commonwealth. "A king of shreds and patches," quoth Shakespeare, although he did not have George VI in mind. The red patches, big and little, that indicate British Empire and Commonwealth territory on the map of the world are held together not by force but by the bonds of common interest and allegiance. With the large exception of India, every square mile of this territory, kingdom or dominion, colony or rock-based fortress, acknowledges allegiance to the same king. And although India has repudiated the crown, she still accepts the king's headship of the Commonwealth of Nations, and so the monarchy remains the visible symbol of unity throughout this worldwide association. And a symbol of unity is needed, for it is amazing how few men on this earth have minds that can really grasp a political abstraction. It is an adventure full of fascination, this experiment in combining fully independent democratic countries with peaceful persuasion among equals as the means of achieving united action on common problems. "I have remarked again and again," said Pericles, "that democracy cannot govern an empire." It may be true, but then the Commonwealth of Nations is like no empire that Pericles ever knew. Whatever its future fate, the commonwealth has given the world its most successful example to date of a working international system. Who knows but what this pattern imitated else-

²⁸ The Indian Communists are now making effective use of trucks equipped with public address systems which tour the villages, assemble an audience with gramophone music, and then deliver short speeches loaded with simple and attractive catch-phrases.

where, in Western Europe, in Asia, and in other areas, may provide in the end the firm foundation of a genuine United Nations of the World.

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France

CHAPTER XXI

The French Constitutional Background

Nothing is ever changed in France; there is only one Frenchman more.—Comte d'Artois

A republic with a past. France is an old country but a young republic. Its political institutions, many of them, are not of republican lineage, for they have been derived from the various monarchies, empires, and dictatorships that have had their day in France during the past 500 years. It is sometimes said that France is a country with the form of a republic, the spirit of a monarchy, and the ambitions of an empire. This, of course, is an oversimplification of the matter, but it suggests that the political psychology of a nation is never fully discolored by a mere reading of its constitution and laws. The Third Republic was hampered, through most of its history, by influential party groups which did not believe in a republican form of government at all. Whether the Fourth Republic will continue to be republican in spirit as well as in form is something which cannot yet be safely predicted.

France began her modern history with the Revolution. Ask any Englishman when the Middle Ages came to an end and he will give you the year 1500 as an approximate date. He calls Cromwell a modern statesman, Shakespeare a modern dramatist, and Milton a modern poet. He is right—so far as his own country is concerned. England entered the modern era about the time that America was discovered. But if you ask a Frenchman he will tell you that the Middle Ages did not come to an end until 1789, inasmuch as feudalism, absolutism, and the other institutions of mediaevalism were not ousted from France until that date. To him the Revolution of 1789 is the most epoch-marking event in the history of the world. "It came like the law on Sinai," wrote Sainte Beuve, "amid thunder and lightning." So, when the Frenchman speaks of modern France he means postrevolutionary France.

THE SHOCK OF THE REVOLUTION

It is not surprising that this should be so, for the Great Revolution shook France as nothing else had ever done. English history contains nothing like it. There have been revolutions in England, but never a revolution like the one which began with the fall of the Bastille on July 14, 1789. It is of significance that Frenchmen still celebrate this anniversary as their chief national holiday. It is to them what the Fourth of July is to Americans.

Characteristics of the old régime: 1. No liberty. France, prior to 1789, was a despotism. All political authority centered in an absolute monarch. There was no constitution, no parliament, no responsible ministry. Once upon a time France had possessed the makings of a parliament, an assembly of three "estates"—one representing the clergy, another the nobility, and the third the common people. But the Estates-General met only when the king chose to issue his summons, and as time went on the intervals between meetings became steadily greater. During the long period intervening between 1614 and 1789 no meetings were called at all. So the Estates-General, unlike the English parliament, never developed into a check upon the royal prerogative. The king made the laws and the ordinances; he also enforced them, and punished violations on his own authority. The classic boast imputed to Louis XIV—"L'Etat, c'est moi"—embodied no mere fiction of royal power. The king and the state were one. He was legislature, executive, and judiciary combined; the people had no share in their national government.

Or self-government. Nor did the people of France, in prerevolutionary days, control their own local government. They had no elective councils, in province or town. Everywhere the officials of the king were in evidence—intendants, subdelegates, procureurs-du-roi, grand voyers, bailiffs, and tax-gatherers. In the king's name they ruled city and country alike, responsible to no one but the monarch himself. Securities for the rights of individuals were unknown. There was no freedom of worship, or of speech, or of petition, no writ of habeas corpus, no trial by jury. By a *lettre de cachet* anyone might be arrested, thrown into jail, and kept in jail, without specific accusation, for any length of time. In a word there was no *liberty*.

2. No equality. Nor was this all. The country was honeycombed with special privileges of every sort. The clergy paid no taxes although the church possessed enormous wealth. It was said to own one-seventh of all land in France. The nobility paid only nominal sums in taxation. The entire burden fell upon the bourgeoisie (or townsmen) and the peasant classes. This burden was very heavy, for the royal government spent money in prodigious sums. To make things worse, the privilege of collecting the taxes was farmed out to profiteers who bid high sums for it and then had to recoup themselves

by squeezing the people. The higher positions in the government service, as well as in the army and the navy, were reserved for members of the *noblesse*. Many public offices, including judgeships, were literally sold at auction and when purchased became hereditary. This meant that only the rich could aspire to positions of honor or emolument in the service of the state. In a word there was no *equality*.

3. No fraternity. Finally, the nation possessed no national consciousness. The kingdom had been built up out of provinces, and the old provincial sentiment remained strong. People continued to think of themselves as Burgundians, or Normans, or Bretons rather than as Frenchmen. There was no system of common law, common throughout the land, as in England. Each province, each part of a province, had its own body of customary law, and no two of them were alike. A traveler in France, it was said, changed laws as often as he changed horses. As between town and rural district, moreover, there was little intercourse and no fraternal feeling. The townsman despised the peasant; the peasant scorned him in return. Trade between town and country was throttled by the *octroi* or municipal tariff which levied duties at the town gates on all merchandise passing from one place to another. Goods going from Havre to Paris paid duties at ten points on the way. Even within the towns the old guilds or close corporations of artisans continued to control industry and to foster all sorts of class animosity. Thus the various parts of the country and the various elements among the masses of the people were kept at arm's length from each other. In a word there was no *fraternity*.

The Revolution of 1789. "Liberty, Equality, Fraternity" thus became the watchwords of the surging tide which overwhelmed the old régime in 1789; and, with a brief recent interlude, they have remained the national motto down to the present day—emblazoned over the doorway of every public building in France.¹ The Great Revolution began in Paris. It burst forth when mobs stormed the grim structure known as the Bastille, overpowered the guards and turned the prisoners loose. Within a few weeks the old order had been leveled to the ground everywhere. A revolutionary government was set up and a constituent assembly proceeded to clear away the debris. Eventually the king and queen were sent to the guillotine; the institution of nobility was abolished, the church was disestablished and its land confiscated; all special privileges and immunities were declared at an end; the Gregorian calendar was displaced by a new system of months and years starting with the Revolution as the Year One; the towns were given complete home rule;

¹ The Vichy government, during the years 1940-1945, tried to substitute the slogan "Work, Family, Fatherland," but without much success.

the country was deluged with paper money (*assignats*), and the executioners were kept working overtime.²

The various revolutionary constitutions (1789-1795). Meanwhile, as the ground was being cleared, the work of rebuilding began. The Revolution produced a series of constitutions. The first was a Declaration of the Rights of Man, promulgated by the assembly in 1789. Then, in 1791, came a more elaborate constitution providing for a responsible ministry and a single legislative chamber. Although the Declaration of 1789 had asserted that "men are born with equal rights and remain so," the suffrage was now limited to those who paid a certain sum in taxes. But this constitution did not go far enough for such radicals as Robespierre who wanted a real democracy of the proletariat. In due course the latter became the virtual dictator of France and inaugurated the Red Terror, but soon fell from power and the moderates gained control. Thereupon another constitution was drafted, submitted to the people, and ratified by them in 1795.

The directory (1795-1799). This constitution of 1795 provided for a legislature of two chambers, chosen by voters with property qualifications. It established a plural executive, or directory as it was called, composed of five members, chosen by the legislature. Strong men were placed upon this directory and the country began to recover from its revolutionary chaos. The events of 1795 marked the turn of the tide. From revolution and radicalism the pendulum now began its swing to conservation and centralization.

The consulate (1799-1804). The government of the directory continued to function for four years, but it never had a fair chance because France was hard pressed by foreign enemies during the whole of this period. In 1799 it was replaced by the consulate with Citizen Bonaparte installed as first consul. The young Corsican had risen rapidly through a series of military victories and by a *coup d'état* took the reins of power into his own hand. Bonaparte was not an enthusiast for democratic government. He did not believe in popular constitutions. On one occasion he remarked that an ideal constitution ought to be "short and obscure." Hence, in 1800, the constitution of the directory was supplanted by a new one in which virtually all power was centralized into a single hand. Thus France had tried five constitutions in a dozen years.

THE NAPOLEONIC RECONSTRUCTION

The first empire (1804-1815); Napoleon's work. The Man of Destiny was now master of France. In 1802 he had himself proclaimed first consul for life and two years later (after submitting the question to a vote of the

² The reader who wishes a succinct account of these great changes will find it in C. D. Hazen, *The French Revolution* (New York, 1932). For the background of the Revolution see H. Taine, *The Old Regime*.

people, he became emperor. Thus, with amazing speed, France ran the whole cycle of Bourbon despotism, revolutionary chaos, makeshift republics, and Bonapartist empire. Both as consul and as emperor Napoleon found it necessary to do a lot of reorganizing. He centralized power in his own hands until he had far more of it than any of the old Bourbon kings ever possessed.³ The whole system of local government was welded into a perfect pyramid. By his *Concordat* with the Papacy, Napoleon restored the church to something like its old status. He could not give back its lands, for these had been divided, and had passed into the hands of many small owners; but it was understood that the church would be supported out of the public funds. "How can you have order in a state," he said, "without religion?" Believing also in social distinctions he revived the institution of nobility, creating a whole new class of nobles from among his supporters, and founded the Legion of Honor. But the most striking among Napoleon's nonmilitary achievements was the compilation of a series of law codes and the systematization of legal procedure throughout the country. These codes have remained in operation, without radical change, to the present day.⁴

His rank as a statesman. Many other things were accomplished, by way of reconstruction, during the Napoleonic era. Unhappily the dramatic character of Bonaparte's military operations have served to dull the world's appreciation of him as a civil leader. Most Americans think of the first Napoleon as a war lord who lost the battle of Waterloo; they do not realize that he was also the most far-visioned and constructive European statesman of modern times. His political imagination was of the first order and he combined it with great organizing power. He was never afraid of a thing because it was new, nor disdainful of it because it was old. Contemporary France owes more to Napoleon's pen than to his sword. He exemplified in full measure the aphorism of Bulwer Lytton that "in the hands of men supremely great the pen is mightier than the sword." The results of his statesmanship are still redounding to the benefit of his people while the fruits of his military victories have long since been taken away.

FRANCE BETWEEN TWO BONAPARTES

The Bourbon restoration (1815-1830). The First Empire came to an end in 1814-1815 by reason of its military collapse. After his defeat at Waterloo, Napoleon was packed off to St. Helena where he grumbled his way to illness and death. Meanwhile the old Bourbon dynasty was restored to power in France. The new king, a younger brother of Louis XVI who had been guillotined during the Revolution, was expected to be the head of a

³ Because their dictatorships were inefficient and decentralized in fact, if not in theory. Bonaparte's subordinates felt the emperor's eye always upon them.

⁴ See below, Chapter xxix.

constitutional monarchy patterned after that of England. So a written constitution was prepared and put into operation. This charter attempted to reproduce the unwritten constitution of Great Britain; hence it contained provision for a House of Peers, an elective House of Commons, and a ministry. It was assumed that the ministers, as in England would hold themselves responsible to the elective chamber. There was to be trial by jury, freedom of the press, writs of habeas corpus, and all the traditional English securities for personal liberty.

But Frenchmen soon discovered that it is far easier to transplant the form than the spirit of a government. British institutions would not take root in Gallic soil. Moreover, as it has often been said of the Bourbon monarchs, they could "learn nothing, and forget nothing." At any rate Louis XVIII never caught the spirit of the constitution which he had sworn to uphold. Neither did his brother, Charles X, who succeeded him in 1824.⁵ The new king tried to set aside certain provisions of the constitution, and by so doing precipitated the "July Revolution" of 1830. This resulted in the king's abdication and France once more faced the problem of providing herself with a new government.

The Orleans monarchy (1830-1848). Most Frenchmen believed that the monarch, not the monarchy, had been at fault, so they kept the monarchy and changed the line of kings. Louis Philippe, of the House of Orleans, a junior branch of the Bourbon dynasty, was put on the throne with the understanding that he would be a strictly constitutional ruler. But owing to the multiplicity of political parties in France the English system of ministerial responsibility would not function. Frenchmen grew tired of a government conducted by bourgeois politicians who spent their time in ceaseless squabbles. "La France s'ennuyait," as Lamartine said, and the sentiment in favor of a republic grew apace. Had France been England her parliament would have solved the problem by a great Reform Act, but neither Louis Philippe nor his parliamentary advisers could take a large view of the situation. They let matters drift until, in 1848, Paris once more flamed into revolution. The king quickly relinquished his throne and the Second Republic was inaugurated.

The Second Republic (1848-1852). The constitution of the Second Republic, framed by a convention of delegates in American fashion, provided for a scheme of government that was simplicity itself. France was now to have a president directly elected for a four-year term by manhood suffrage. The ministers were to be named by the president. And there was to be a parliament with a single chamber. No more would France try to pattern her political

⁵ For a full account see F. B. Artz, *France under the Bourbon Restoration* (Cambridge, Mass., 1931).

institutions after those of England. A simple constitution, with a heavy infusion of democracy would provide a cure for the nation's troubles. And a strong president would regain for France her place of leadership among the powers of Europe.

The problem of finding a president. But where would France find a strong man, with a dominating personality, to be president of this Second Republic? Right here the new constitution ran into its first great problem because there were no outstanding popular idols in sight. France in 1848 had some statesmen who were old and discredited, and some who were young and unknown; but she had no one whose qualities marked him as the man of the hour. There was one ambitious fellow, however, who saw in this situation a heaven-sent opportunity. Louis Napoleon, a nephew of the Great Corsican, had been living in England, an exile. As head of the family and heir to the Bonapartist tradition, he quickly seized the occasion, crossed to France, and got himself elected a member of the assembly. Then he announced his candidacy for the presidential office. He had no visible qualifications for the post except the heritage of a great name. But the Napoleonic legend and his lavish promises were enough. The country rallied to this soldier of fortune and he was elected by an overwhelming majority.

Louis Napoleon and the coup d'état of 1851. As might have been expected, the election of a Bonaparte to the presidency was a prelude to the end of the new republic. Louis Napoleon had unrepublican ambitions. His heart was set on becoming emperor. "With the name I bear," he said, "I must either be on a throne or in a prison." Although elected president for only four years, and constitutionally ineligible for re-election, he had no intention of quitting his post of power. Accordingly, as his term drew to a close, he decided upon a characteristically Bonapartist stroke. Having secured the support of the army, he moved large bodies of troops to Paris and arrested all the political leaders who were known to be opposed to him. Then, on the morning of December 2, 1851, the people of the city awoke to find the billboards placarded with proclamations announcing that the president's term had been extended to ten years. There was a slight show of popular opposition, but it was unorganized and speedily repressed. Less than a year later the president submitted to the people of France the question whether he should become emperor. This plebiscite was so adroitly manipulated that the people gave an affirmative vote and in November, 1852, the Second Republic was transformed into the Second Empire with Napoleon III at its head.⁶

⁶ The title "Napoleon II" was thus posthumously reserved for the young King of Rome, the only son of Napoleon I. This election marks the beginning of the use by dictators of the device of a managed plebiscite to give their reigns the appearance of democratic support. It was subsequently used by Diaz in Mexico, other Latin American despots, Mussolini, Hitler, Stalin, and others.

THE SECOND EMPIRE AND ITS COLLAPSE

The Second Empire (1852-1870). Under Napoleon III some important changes were made in the plan of government. The double-chamber system was revived, with a Senate made up of high officials and of senators appointed for life by the emperor. The lower house, or assembly, although ostensibly chosen on a manhood suffrage basis, never proved to be a mirror of public opinion. The elections were controlled in ways which ensured the choice of the "official" candidates. One method was to provide that the ballots were not to be counted when the polls closed, but were to be taken home by the election officers, kept overnight, and counted in the morning. In the interval between the closing and the counting most of the election officers did their duty.

The centralization of political power. Anyhow it did not matter much if some opposition crept into the Chamber of Deputies. The emperor had his ministers, appointed by himself, and not responsible to either branch of parliament. The imperial power became as fully centralized under Napoleon III as it had been in the days preceding Waterloo. Napoleon III had none of his uncle's brilliance either as a statesman or soldier, but he was by no means lacking in resourcefulness and managed to stay on the revived imperial throne for eighteen years.

Its early popularity and later decadence. The Second Empire lasted from 1852 to 1870. It inaugurated an era of business prosperity in France, and this proved to be (as prosperity usually does) a great solvent of political discontent. During his first eight or ten years the emperor was popular with the church, with the army, with the business interests, and to some extent with the masses of the people. But after 1860 his star began to wane. The country grew restless under the rigorous autocracy of the government. Napoleon III attempted to divert attention from domestic affairs by plunging the country into various military and diplomatic ventures—the Crimean War, the Franco-Italian-Austrian War of 1859, the expedition to Mexico, and a gesture towards the Rhine in 1866. These maneuvers succeeded for a time, but the incessant stimulus brought its inevitable reaction. Popular restlessness became so disturbing that various concessions to the principle of ministerial responsibility ultimately had to be made, particularly on the eve of the War with Prussia in 1870. This war, which Napoleon III entered so confidently, brought his own rule to an end.⁷ For the emperor, with a large portion of his army, was cornered by the Germans at Sedan and forced to surrender. Napoleon III was subsequently released by his German captors and went to England where he died in 1875.

⁷ The causes of the Franco-German War of 1870 are too complicated for narration here. They are set forth in all the general European histories of the period.

The collapse of 1870. When the news of this surrender reached Paris, the capital blew up with indignation. The Empress Eugénie, who had been serving as regent while her husband was at the front, fled to England. A committee of national defense took control of affairs and the Third Republic was proclaimed without any general agreement, however, as to what sort of republic it should be. Many of those who helped to proclaim it were monarchists at heart, while some others, at the opposite extreme, were radicals who desired a proletarian dictatorship.

THE THIRD REPUBLIC

Provisional government of the Third Republic. Meanwhile the committee set itself up as a provisional government. The immediate problem was to solidify resistance to the Germans and to save Paris from capture. As it turned out, however, the military disasters were too great to be retrieved by any eleventh-hour effort. The Germans advanced to Paris, surrounded the city, and forced it to capitulate in the early days of 1871. The surrender was followed by an armistice during which the French people elected a national assembly empowered to pass upon the terms of peace. Its members were elected for no definite term and tacitly assumed unlimited powers. Most of them were avowed monarchists who had little real interest in republican government.

The Commune—a Red interlude. The make-up of this national assembly was a great disappointment to the radical elements, especially in Paris. They showed their resentment by establishing a revolutionary government in the city, thus endeavoring to set Paris free from control by the new national government. A brief but sanguinary civil war resulted and after some weeks of hard fighting within Paris the revolutionary government of the Commune (as it was called) came to an end. Thus the capital was subjected to a double siege and capture within a single year, first by German and then by French troops. The Commune interlude produced a reaction throughout France and made certain that the Third Republic, if a republic at all, would be a definitely conservative one.⁸

The national assembly and the terms of peace. The national assembly was now able to go ahead. Its first task was to complete the peace negotiations with the Germans and get them out of France. This unpleasant mission was entrusted to Adolphe Thiers, whom the assembly appointed chief executive of France with the proviso that his authority might be revoked at any time. Thiers

⁸ Although the Communists have always claimed the Paris Commune of 1871 as a spiritual "ancestor," the fact is that the Communards were mainly believers in decentralized communal democracy.

became, in effect, temporary President of the Republic, while retaining his seat as a member of the assembly. Under his direction the terms of peace were arranged and ratified.

Framing a new constitution. The assembly also turned its attention to the task of framing a new constitution, and here some serious difficulties were encountered. With a membership of more than 700 it was too cumbersome a body for constitution-making. A majority of its members, moreover, being monarchists or imperialists at heart, did not desire a republic as a permanent institution. These antirepublicans were in sufficient numbers to have adopted any sort of monarchical or imperial constitution if they had only been able to agree among themselves. But they were divided—some wanted a Bourbon monarchy, some an Orleans monarchy, and some a restoration of the Bonapartes.

The Rivet Law (1871). This disunion enabled the republicans to keep control of the assembly, and in the late summer of 1871 it passed a law by which Thiers was definitely named President of the Republic with the provision that both he and his ministers should be responsible to the assembly for all their official acts. This action virtually committed the Third Republic to the principle of executive responsibility after the English fashion.

Factional quarrels and deadlock. For nearly two years France drifted along under this makeshift arrangement, without a constitution and without any clear decision as to her ultimate form of government. There seemed to be no hope that a majority could be had for any comprehensive document. In its dilemma, therefore, it was decided to set up a committee which would prepare individual resolutions (*projets*), in the hope that some of the controversial questions relating to the form of government might be settled one by one.

The makeshift constitution (1875). This proved to be a way out of the difficulty, and in 1875 the assembly was able to adopt a series of "constitutional and organic laws." Then, having made provision whereby these laws might be easily amended, it went out of existence. These laws were all that the Third Republic obtained in the way of a constitution from this long-lived assembly.⁹

THE CONSTITUTIONAL LAWS OF 1875

Its nature. The French constitution of 1875 differed from that of any other nation. It was unlike the constitution of Great Britain because it was

⁹ The Law of February 24, 1875, dealt with the Senate; the Law of February 25 related to the president, the Chamber of Deputies, and the ministry; and the Law of July 16, 1875, explained the relations of the public authorities. The text of these laws may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), or in W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937), Part II, pp. 8-15.

drawn and put into force by an authorized group of constitution-makers. It was unlike the Constitution of the United States in that it comprised not one document but three. In form it was a piecemeal, half-hearted, unfinished affair. These constitutional laws of 1875 bore visible evidence of the spirit in which they were drafted. Their provisions were poorly arranged and crudely worded. They were silent on many matters of the highest importance, for example, the rights of the citizens, the organization of the courts, the selection of the ministers, and even the method of constituting the Chamber of Deputies.

How it differed from previous French constitutions. It is not that Frenchmen were novices in the art of making constitutions. At drafting and adopting such documents they had, in 1875, more experience than any other European people. Between 1789 and 1875 France had at least seven or eight constitutions, each of which was believed by its framers to be worthy of a long life. The Charter of 1814 was extolled as a perfect copy of a perfect model. It died of anemia when it was only sixteen years old. The constitution of 1848 was regarded by the founders of the Second Republic as the last word in governmental simplicity and effectiveness. It perished while still in its swaddling clothes. The constitution of 1852 was heralded as an instrument through which the old-time glories of France would be revived. It brought the country to humiliation and civil war. The constitution of 1875 differed from all its predecessors in that nobody was proud of it, nobody was willing to be its godfather, nobody thought it would live, nobody regarded it as anything but a makeshift compromise. Its framers, for the first time in the history of French constitution-making, felt under obligation to apologize for their work.

The sequel (1875-1940). But they builded better than they knew. Their jerry-built little craft proved far more seaworthy than any of the carefully designed vessels of earlier days—whether imperial, monarchical, or republican. It weathered the storm and stress of the First World War, ploughed its way through a long series of domestic crises, and was on the eve of celebrating its sixty-fifth birthday when the Nazi conquest of France overwhelmed it in 1940.

General nature of the old government. This is not so surprising as at first glance it might seem. The explanation may be found in the fact that, unlike all preceding French constitutions, this one did not embody any system of political philosophy. It contained no gilded phrases. It left a great array of things to be determined by law on the basis of experience. It could be amended easily. A simple majority at a joint session of the two legislative chambers (this joint session being officially known as the national assembly) was empowered to enact amendments. Yet, rather strangely, very few amend-

ments were made during the long period between 1875 and 1940. In general this constitution provided for a President of the Republic, elected at a similar joint session for a six-year term and re-eligible. There was a Senate, with members elected by the general councils of the *départements* (administrative divisions of the country) and a Chamber of Deputies chosen by manhood suffrage. A prime minister was named by the President of the Republic and he chose the other ministers; but all were made responsible to the chambers; although they became in fact responsible almost entirely to the Chamber of Deputies alone.¹⁰

Its weaknesses and vicissitudes. The government of the Third Republic, under this arrangement, had its own vicissitudes. As will be seen in a later chapter, it had more than its share of *contretemps*—including the Boulanger episode, the Dreyfus case, the struggle with the church, and many political scandals. This succession of “troublers in Israel” kept the country in a political ferment, with only brief interludes of calm between. Yet it can fairly be said that in these intervals the constitution of 1875 gave France a system of administration that was reasonably competent. On the other hand, it did not succeed in adapting itself to the economic and social demands of the depression era during the thirties. Serious problems of public finance were not faced but evaded or delayed. Millions of Frenchmen wanted a new deal but found themselves burdened with a system of government which was incapable of providing one.

The chief trouble was the curse of cabinet instability. Ministries came into office and were voted out of it with a frequency which prevented anything approaching a consistent plan or policy. This was because the multiplicity and shifting of party groups in the Chamber of Deputies made it almost impossible for any cabinet to keep control of a majority there. And without a majority it could not stay in power. Such a situation inevitably produces leaders, adept in the acts of intrigue, who can play off one party against another and who know just when a “double-cross” is required if they are to remain in power. They are men who come to power and remain there because they are clever manipulators who can make use of the ambitions and frailties of others rather than statesmen of courage and firm principles. Especially during the ten or twelve years before the Second World War the whole fabric of French government seemed steadily to deteriorate. The quality of the men who occupied high public office underwent a noticeable decline during these years. The French people were deluded by their leaders into a belief that their nation was strong whereas it lacked both military and economic

¹⁰ The Senate, by its firm opposition to a proposal by the government was able occasionally to procure the latter's resignation.

strength. When the German armies swept into France in 1940 the nation was even less prepared to meet the onslaught than it had been in 1870, not only in a physical but in a spiritual sense.

General History. A good brief account of the period 1789-1871 is given in G. L. Dickinson, *Revolution and Reaction in Modern France* (London, 1892); Emile Bourgeois, *History of Modern France* (2 vols., London, 1919); and J.S.C. Bridges, *History of France* (Oxford, 1929). For greater detail reference may be made to E. Lavisse, *Histoire de France* (6 vols., Paris, 1901-1911), and the volumes on the *Histoire de France contemporaine* by the same editor. Interesting background material can be found in A. Siegfried, *France, A Study in Nationality* (New York, 1930). A. Maurois, *The Miracle of France* (New York, 1949) is an interesting general history of French civilization, though weak on the political side. Lucien Romier in *A History of France* (Translated and completed by A. L. Rowse) presents a brief and readable general account of French history (New York, 1953).

The Third Republic, and the Vichy Interlude. On French political history from 1871 to the end of the Second World War reference may be made to Gabriel Hanotaux, *Contemporary France* (4 vols., New York, 1903-1909); Jacques Bainville, *The French Republic, 1870-1935* (London, 1936), which gives a conservative view by a royalist historian; A. Zévaès, *Histoire de la troisième république* (Paris, 1926); Raymond Recouly, *La troisième république* (Paris, 1927); Maurice Deslandres, *Histoire constitutionnelle de la France* (3 vols., Paris, 1937). Probably the best account in English is D. W. Brogan, *France Under the Republic, 1870-1939* (New York, 1940). A. Maurois, *Why France Fell* (London, 1941); H. F. Armstrong, *Chronology of Failure* (New York, 1940); H. Pol, *Suicide of a Democracy* (New York, 1940), all provide commentaries on the events of 1939 and 1940. P. Tissier, *The Government of Vichy* (London, 1942), describes the earlier stages of the Laval-Pétain dictatorship. An unimpassioned and penetrating account of the fall of France may be found in M. Bloch, *Strange Defeat* (New York, 1949). The author, a professor at the University of Paris, was active in the resistance and was executed by the Gestapo in June, 1944.

French Constitutions. The various French constitutions from 1789 to 1875 may be found in F. M. Anderson, *Constitutions and Other Select Documents Illustrative of the History of France* (2nd edition, Minneapolis, 1908), and in Duguít and Monier's *Les constitutions et les principales lois politiques de la France depuis 1789* (7th edition continued by Georges Berliá, Paris, 1952).

CHAPTER XXII

The Founding of the Fourth Republic

The French Republic, faithful to its traditions, abides by the rules of international law. It will not undertake wars of conquest and will never use its arms against the freedom of any people.
—Constitution of the Fourth Republic

The collapse of 1940. The débâcle of the French military power took place with a suddenness that startled the world. Neither in France nor elsewhere was there any idea that so complete an overthrow could take place in so short a time, for it went far beyond the collapse of 1870. The Germans struck at Poland on September 1, 1939. France immediately decided to fulfill, with Great Britain, her obligation to help the Polish people in the event of an unprovoked attack, declared war on Germany, and mobilized her armed forces. For several months, however, the contestants in the West sat behind their fortifications without either side taking the offensive. The rest of the world spoke of it as a “phony” war. Meanwhile the Germans conquered Poland and made a friendly agreement with Russia. Then, early in May 1940, the German armies surged over Holland, Belgium, and Luxembourg, having first blasted their way by air bombardments. While French forces were moving hurriedly to help the Belgians, the Germans launched a heavy attack to the south, broke around and through the extensive French fortifications known as the Maginot Line, overran the whole of northern France, and forced the government to ask for an armistice.

The Vichy government. By the terms of this armistice France was divided into two principal zones, namely an occupied zone which included the whole of France north and west of an irregular line from Switzerland to a point a little east of Tours, and from there due southwest to the Spanish border. This zone, comprising more than half of France, included Paris and Versailles as well as all the French seaports on the Channel and the Mediterranean. In addition Italy, as the ally of the Germans, was to occupy a small strip in

the south. The rest of France was to be known as the unoccupied zone. In theory the French government was to continue its administration of civil affairs in both zones, but its freedom of action was considerably less in the occupied than in the unoccupied areas. In the former German orders and decrees took precedence over those of the French authorities. Even in the latter, as time went on, German control was tightened up. Intercourse between the two zones was restricted as though they were different countries.

Soon after the collapse of the French armies, the Chamber of Deputies assembled hastily at Bordeaux and President Albert Lebrun asked the ancient hero of Verdun, Marshall Pétain, to form a government. The following month (on July 9, 1940), the Chamber and Senate met at Vichy and voted almost unanimously to revise the constitutional laws. They met the following day as the national assembly to do this. Two plans were submitted. The Taurines plan called for a temporary suspension of the constitution, the old Marshal to govern by decree for the duration of the war, and a constitutional committee to draft a new constitution which would be submitted after the war to popular referendum. The other plan was advanced by Pierre Laval. He urged that all constituent powers be given to the "government of the republic" (Marshal Pétain and his advisers). Laval managed to get the Taurines plan set aside and his own adopted by a vote of 569 to 80. Party lines were badly split on this vote and one can only assume that the action taken was the result of haste and desperation as well as a failure to understand its results. So the Third Republic committed suicide. The Marshal became a virtual dictator without responsibility to an elected assembly.

End of the Third Republic. Thereupon a series of far-reaching decrees were issued. These were known as "constitutional instruments." One abolished the office of President of the Republic and made Pétain chief of state with indefinite tenure and the right to name his own successor. Another conferred on him all powers, both executive and legislative. Still another adjourned the national assembly for an indefinite period and provided that neither the Senate nor the Chamber of Deputies should meet except when called into session by the chief of state. (The call never came.) A ministry or council of ministers was appointed to carry on the work of government. In place of the adjourned parliament the chief of state appointed a national consultative council of about 200 members which functioned to some extent through advisory committees. Under this arrangement the Vichy authorities carried on until the eve of the liberation, being kept at all times under an increasingly close surveillance by the Germans.

In the judiciary and in the local government system no general overhauling was undertaken by the Vichy régime, but the authoritarian spirit was

infused into all of them and those who did not support the new order were ousted from their posts. Special courts were set up for the trial of persons accused of sedition or of resistance to the new government. The civil service was "purged" of all whose loyalty to the Vichy régime could be questioned—especially Jews, members of secret organizations, and Communists. Security of tenure for public employees was abolished and all were made subject to removal at the will of the higher authorities. In local government the powers of the prefects or heads of *départements* (counties) were given much wider powers and the practice of electing councils in these areas was abolished. So with the subprefects in the *arrondissements*. Mayors in all communes (towns) of any considerable size were made appointive. Municipal councils, if they showed any recalcitrancy, were replaced by appointive delegates. No local elections were held while Vichy ruled. In Paris the municipal council was abolished, its place being taken by an appointive budget committee with advisory powers only. A significant innovation was the appointment of commissioners who were sent around the country to make investigations, with power to suspend or dismiss officials both national and local on grounds of incompetence. Likewise some seventeen regional areas were set up under superprefects who exercised a certain degree of supervision over the work of local administration.

Various grandiose plans of social and economic reform were likewise prepared and announced with great *éclat*. Most of them did not get much farther than the scheme-on-paper stage. Even the vaunted Charter of Labor, issued in October, 1941, encountered strong opposition from the workers whom it was intended to benefit, especially from the once powerful Confederation of Trade Unions. A document of nearly 300 pages, it was designed to provide in each industry a state-controlled union, replacing the former associations of both employers and workers. The machinery for administering this charter was so cumbersome that it failed to function effectively and eventually broke down under its own sheer weight.

Political parties were suppressed. The press was subjected to the severest censorship. Jews were relentlessly persecuted. Floods of Vichy propaganda inundated the land. A census of workers was taken and in response to German insistence some hundreds of thousands were conscripted and sent to labor in Germany. Many more were arbitrarily assigned to work in various parts of France, some of them in the construction of fortifications on the coast facing England. The tribulations of the French people during these years have been told in many narratives; they do not need to be recounted here.

Vichy represented the convergence of several antirepublican elements.

Many of the old military, naval, and administrative officials had never really accepted the republic.¹ They wanted a more authoritarian regime, with labor kept in its place and a new understanding with the Catholic Church. The extreme Right was represented too: some royalists and the old "anti-Dreyfusard" group. These were joined by the forces of defeatism who were desperately tired of international crises and who hoped that a proper subservience to the German masters would permit France to survive. The loss of republican democracy was a price they were willing to pay, for they were convinced that a complete German triumph was only a matter of months.

As the war progressed and German victory grew more remote, Vichy, under pressure from the Nazis, introduced more and more stringent controls enforced by the hated Vichy militia under Laval. After the French navy destroyed its fleet at Toulon in November, 1942, and the Germans occupied all France, the Vichy régime became a mere façade for the Nazi conquerors.

The era of resistance and the national council of resistance. It should not be imagined, however, that all this oppression was imposed by Vichy without vigorous opposition from several resistance groups which carried on their underground operations throughout the war. For a time these various groups worked independently, but after the landing of the Allied forces in North Africa and the setting up of a provisional government in Algeria, the movement for unification grew rapidly. In 1943 a national council of resistance was formed to consolidate the several resisting groups together with the "government in exile" which General Charles de Gaulle had formed in London. With the liberation of France by the Allied troops a year later, General de Gaulle moved across the Channel to Paris and set up the headquarters of the provisional government there. This government was then given official recognition by the Allied powers. At once a national consultative assembly was called to meet in Paris, its function being to act as an advisory parliament until a general election could be held and a new constitution framed. Its members were drawn from all the groups which had shared in the resistance.

The provisional government of 1944. As set up in September, 1944, the provisional government consisted of General de Gaulle as chief executive with a ministry of about twenty members known as commissioners, each of whom was the head of an administrative department. Vacancies in the ministry were to be filled by vote of the remaining members—an unusual arrangement. The chief executive was also a virtual prime minister with general supervision over all governmental activities, including foreign relations and military affairs. Until a new parliament could be assembled it was provided that the ministry should have power to issue ordinances and decrees with

¹ See article by André Schwob, "L'affaire Pétain" in *La République française* II, 1 (January, 1945), pp. 11-13.

the force of law. The consultative assembly was continued on an appointive basis with an enlarged membership, but the ministers had no responsibility to this body, either individually or collectively. There was an informal agreement, however, that members of the ministry should be chosen to represent all the political groups in France, including the Communists.² (This, however, was not carried out in full.) In the field of local government all officials who had been appointed by the Vichy authorities were swept out of office and provisional arrangements were made for the restoration of the old elective councils in these areas. It was understood, of course, that this entire plan of government was to be temporary and should serve only until a constituent assembly (or constitutional convention) could be elected and set up a permanent system.

The first constituent assembly (1945). Steps to this end were taken in the autumn of 1945 when the provisional government worked out a plan for the election of a constituent assembly and for the general control of governmental affairs by this assembly while in session. The election took place promptly, on October 21, 1945, the delegates being chosen by universal suffrage. (It is worth mentioning that for the first time in the history of France women were given the right to vote at this election.) The system of voting was designed to provide a reasonable measure of proportionate representation to the various political parties or groups. Besides electing delegates to the constituent assembly the voters were asked to decide whether this body should also serve as a parliament, with lawmaking powers, during the period which would necessarily intervene before a new constitution could be put into operation. That question was answered in the affirmative by a large majority. The voters were also asked to approve a proposal to the effect that if the constitution, as framed by the constituent assembly, should be rejected at the polls, a second election would be held immediately under the same procedure as the first, with the second assembly having similar powers.³

Its organization and work. The first constituent assembly was a large body, with nearly 600 members.⁴ It was made up mainly of Communists, Socialists, and members of a new Catholic Socialist party, the Popular Republican Movement (MRP) in about equal numbers with a sprinkling of delegates from at least a half dozen other groups. The Right was virtually elimi-

² During the early stages of the war, before the German attack upon the USSR, the Communists had adopted defeatist tactics (See Edmund Taylor, *The Strategy of Terror*, Boston, 1942). Afterward they became active in the resistance movement and dominated many of the "Maquis" units.

³ Over 96 per cent voted against a return to the Third Republic; 66 per cent ratified De Gaulle's plan to restrict the constituent assembly. The voters were united in opposing what they did not want. They were divided and uncertain as to what should be done.

⁴ Of whom thirty-three were women, sixteen of them Communists.

nated. When the assembly met, President de Gaulle surrendered his powers into its hands, but was promptly re-elected. Becoming dissatisfied with the attitude of the assembly on questions of national policy he again resigned, and Félix Gouin, leader of the Socialist party, was chosen in his stead.

As the Left held the balance of power in the assembly, and as the Communists were an important part of the Left and knew exactly what they wanted, the proposed new constitution was strongly influenced by their views.⁵ It began with a lengthy Declaration of the Rights of Man, many of these rights being couched in such vague terms that they could be construed to mean much, little, or nothing at all.⁶ For example, the workers were guaranteed a general right to "participate in the management of enterprises"—but with no indication as to how or to what extent. It provided for a single legislative chamber, elected for five years by universal suffrage with compulsory voting and proportional representation. This single chamber was empowered to choose a president for six years, but no one would be permitted to serve in this office for more than two terms. In general his functions were to be even less extensive than those of the president under the Third Republic. Similarly the legislative chamber was empowered to elect a prime minister, who in turn would choose the members of his ministry, but all would be directly responsible to the chamber. A supreme judiciary council, with the President of the Republic at its head, was to have full authority over the appointment and promotion of judges. Provision was also made for a national economic council with advisory powers.

Rejected at the polls. This proposed new constitution, with its virtual centralization of power in the hands of a single chamber, was strongly supported by the Communists who felt that the system of proportional representation would ensure their holding the balance of power; it was just as strongly opposed by other parties, and General de Gaulle threw the weight of his influence against its adoption by the people. The long declaration of rights seemed to many voters a veiled assault on the whole institution of private property. Some provisions of the document, especially with reference to the overseas territories of France, were also deemed objectionable by large groups of voters. At any rate, after a lively campaign, consisting mainly of slogans, the proposed constitution was submitted to the voters on May 5, 1946, and rejected by a majority of more than 1,000,000 (53 per cent of the vote was opposed).

The second constituent assembly (1946). So the call went forth for the election of a new constituent assembly, and this election took place in the

⁵ Some of these had been incorporated into a Resistance Charter which was elaborated by representatives of various resistance groups during the occupation.

⁶ The declaration included thirty-nine articles.

ensuing summer. At this election the Communists kept their strength of 5,000,000 votes, the Socialists lost ground and the MRP got the biggest vote of any single party (28.2 per cent of all votes cast). The Left nevertheless was still strong enough to exert an important influence upon the work of the assembly in redrafting the constitution which had been rejected at the polls.⁷ This revised document, however, when compared with its immediate predecessor, shows some significant differences. It was considerably more conservative. Notable among the changes was the provision for a second chamber, to be known as the Council of the Republic. This body, however, was given very limited powers, much narrower in scope than those which had been possessed by the Senate under the Third Republic and indeed less extensive than the authority now exercised by the British House of Lords.⁸ It provided that the President of the Republic should be elected by the two chambers of the French parliament in joint session—as had been the case under the Third Republic—and that the ministers should be nominated by him, subject to the approval of the lower chamber, or National Assembly. It established the French Union on something like a federal basis.⁹ It shortened the elaborate declaration of rights to a reasonably brief preamble. Various other alterations served to make the second document more palatable than the first—at least to all party groups except the Communists. But no group greeted it with any marked enthusiasm and when it was submitted to the people in October, 1946, they adopted it by a small majority. It went into effect on Christmas Eve in the same year.¹⁰

The “October” constitution. The constitution of the Fourth Republic was framed in an atmosphere of compromise. No group in the constituent assembly got what it wanted or was satisfied with it. At the polls the people adopted it because they wanted something in the way of a constitution and saw no real hope of getting anything better. The establishment of a “presidential” system such as exists in the United States was proposed from some quarters but received very little support. Most of the leaders feared that such a plan, in view of French traditions, would lead to a dictatorship. On the other hand, there was no great enthusiasm for a “parliamentary” system based on the British model—with a cabinet virtually dominating the legislature and able to dissolve it at will. What ultimately emerged from the

⁷ This was the case because a small number of native Algerians in the assembly added their votes to those of the Socialist and Communist parties to make exactly half (293) of the total voting strength.

⁸ See below, pp. 403-406.

⁹ Below, pp. 531-532.

¹⁰ An article by R. K. Gooch entitled “Recent Constitution-Making in France” may be found in the *Am. Pol. Sc. Rev.* Vol. XLI (June, 1947), pp. 420-446, and one on “The New French Constitution” by André Géraud in *Foreign Affairs*, Vol. XXV (April, 1947), pp. 433-450.

constituent assembly in October, 1946, was a considerably diluted form of parliamentary government, with some hitherto untried features—a rather curious political mosaic with some provisions which are by no means certain to prove workable. In its essential features, notably the provision of a cabinet responsible to the assembly but normally without the power to procure a dissolution, it is astonishingly similar to that of the repudiated Third Republic.

Its preamble. This new constitution of the Fourth Republic begins with a preamble which enumerates a series of civic rights. It “solemnly reaffirms the rights and freedom of man and of the citizen consecrated by the Declaration of Rights in 1789.”¹¹ Then it proceeds to enumerate other political, economic, and social, privileges which are deemed to be “most vital in our time.” These include the guarantee to women of “equal rights with men in all domains,” the duty to work and the right to obtain employment, the right to join a labor union of his choice, “the right to strike within the framework of the laws, and the right of every worker to participate through his representatives in collective bargaining.” A significant provision is that “all property and all enterprises that have now or subsequently shall have the character of a national public service or a monopoly in fact must become the property of the community.”

Guarantees of social rights. Then follow a number of rather compendious guarantees which assure to everyone (but especially to children, mothers, and the aged) protection of health, material security, rest, and leisure. “Every human being who, because of his age, his physical or mental condition, or because of the economic situation, finds himself unable to work, has the right to obtain from the community the means to lead a decent existence.” No one, it is provided, may suffer in his work or his employment because of his origin, his opinion, or his beliefs—in other words, no discrimination either racial, political, or religious. The establishment of free, secular, public education at all levels is declared to be a duty of the state. Both children and adults are guaranteed an equal access to “education, professional training and culture.”

International and colonial pledges. The final clauses of the preamble deal with international and colonial obligations. France, it is stipulated, will observe the rules of international law, will not undertake any way of conquest, and “will never use its arms against the freedom of any people.” On the other hand the republic will accept, on condition of reciprocity, any limitations of sovereignty which may be essential to the organization and defense of peace. In the domain of colonial policy, the people of the over-

¹¹ This landmark of the Great Revolution may be found in translation in Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 79-81.

seas territories are assured of a place in the French Union on a basis of full equality with the French people themselves. A promise is made that France will guide the inhabitants of her overseas territories "towards freedom to govern themselves and to manage their own affairs." All such inhabitants, meanwhile, are accorded equal access to public office and are assured the enjoyment of all rights and liberties established by the constitution of the republic. Citizens and nationals of all territories within the French Union are given the full status of French citizens, with the specific declaration that they are thereby assured of all the rights and liberties enumerated in the preamble of the constitution.

This declaration of constitutional privileges, although not so far-reaching in its implications as was the one included in the rejected "April" constitution, goes a long way. It represents extensive concessions to the Communist program—concessions which seemed necessary in view of the French political situation as it existed in 1946. One cannot predict, of course, the extent to which these various "political, economic, and social principles" will be translated into actualities of governmental policy. A great deal will depend upon the strength of the leftist groups in the National Assembly during the years to come. A reasonably full implementation of these declared principles will in any event take considerable time and will call for greatly increased expenditures.

Method of amendment: 1. The first step. The constitutional laws, on which the Third Republic was based, could be amended by a majority vote of the two chambers (Senate and Chamber of Deputies) sitting in joint session as a national assembly. It was freely predicted in 1875 that, by reason of this simple process, amendments would be made with great frequency. But this did not turn out to be the case. Amendments during the period 1875-1940 were few and far between. Amending the new constitution has been made a much more complicated procedure. The first step is the adoption of a resolution by an "absolute majority" of the National Assembly (which is the chamber of parliament elected by direct popular vote), stating the purpose of the proposed amendment. Not less than three months later this resolution is given a second reading under the same rule as the first, unless the Council of the Republic, within the interval, has also adopted it by an absolute majority. The Council of the Republic is the other chamber of the French parliament, and its members, as will be explained later, are chosen for the most part by electoral colleges in the various *départements* or administrative divisions of France.

2. Later steps. When the resolution has been adopted in accordance with the foregoing procedure, the National Assembly must frame the specific amendment in the form of a bill which is then submitted to both chambers in the same way as is prescribed for any ordinary bill. If it then fails to

obtain a two-thirds majority in the National Assembly, or a three-fifths majority in both chambers, it must be submitted to a referendum at the polls. But no constitutional amendment relating to the existence of the Council of the Republic may be adopted except with the concurrence of the latter body or by resort to a referendum.

The constitutional committee and its functions. Since no court in France has authority to declare a law unconstitutional, an interesting safeguard is set up to ensure that proposed laws of doubtful constitutionality can be put into effect, if at all, only by the procedure of amending the constitution. In order to determine whether any law passed by the National Assembly would require a constitutional amendment for its validity there is provision for a constitutional committee. This committee is made up of the presidents of the two chambers together with seven members chosen by the National Assembly and three members chosen by the Council of the Republic. The choice is made at the beginning of each session by proportional representation of the various party groups, but the persons chosen by each chamber must be from outside its own membership. It is the function of this committee to examine any law (prior to its official promulgation) whenever so requested by the President of the Republic and the presiding officer of the Council of the Republic, provided the latter has been so authorized by an absolute majority of the Council. If the committee decides that the law "implies an amendment of the constitution," it refers the measure back to the National Assembly and the law may not then be promulgated until it has gone through the procedure which is provided for a constitutional amendment. But if the committee decides that the law is not of such nature that it requires a constitutional amendment, it is promulgated within fifteen days.¹²

Amendments which are forbidden. There are two restrictions on the scope of amendments. One is that "the republican form of government may not be the subject of any proposal to amend the constitution." The other is that in case any portion of France (not including the overseas territories) is occupied by foreign forces, no proposed amendment shall be undertaken, or, if it has been initiated before the occupation, it must not be continued while the enemy forces are in France. This latter restriction, of course, is designed to prevent at any future time what happened at Vichy in 1940.

General arrangement of the constitution. The French constitution, as a document, consists of a preamble and twelve "titles" or chapters, each of which is divided into articles, there being 106 articles in all. The titles or chapters bear headings such as "Sovereignty," "Parliament," "The President of the Republic," "The Council of Ministers," "The Superior Council of

¹² For additional discussion of this committee see below, pp. 475-477.

the Judiciary," "Local Administrative Units," and so on. An extensive chapter (Title VIII) is devoted to the French Union.¹³ On the whole the constitution is a reasonably concise document, occupying about fifteen printed pages which can be read in a half hour or so. Some of its articles are broad and general, while others set up procedures in considerable detail.

A few fundamental provisions. France, in the words of the constitution, is declared to be "a republic, indivisible, secular, democratic, and social." Sovereignty belongs to the French people, to be exercised by them in constitutional matters by their representatives or by referendum. In all other matters they exercise their sovereign powers through the National Assembly. The tricolor flag is designated as the national emblem, the *Marseillaise* as the national anthem, and the words "Liberty, Equality, Fraternity" as the national motto. Borrowing the words of Abraham Lincoln, the government of the Fourth Republic is declared to be "government of the people, for the people and by the people."¹⁴

The two governmental systems. The constitution sets up two governmental frameworks, one for France itself and another for the French Union. The two are closely interconnected with the same executive officers, but with separate legislative bodies. A careful reading of the constitution, however, will disclose that the parliament of the republic has the ultimate lawmaking authority in all matters and that the powers of the two union chambers are for the most part advisory. This is made clear by the provision (Article 72) that "legislative power with regard to penal law, civil liberties and administrative organization in the overseas territories shall rest with the parliament" (that is, with the parliament of the republic). In all other matters laws enacted by this parliament can be made applicable to the overseas territories by express provision to this effect.

Overseas representation. Prior to the collapse of the Third Republic, various French colonies, although not all of them, were given representation in the Chamber of Deputies with voting rights there. They had no representation, however, in the Senate. And their privileges were based upon law, not on a constitutional provision, hence they could be revoked at any time. The new constitution now gives all the overseas territories the right to have members in both chambers of the French government.¹⁵ But it does not stipulate how many representatives each overseas territory shall have, or in what manner they shall be elected. These matters are left to be determined by law, and they have been so arranged as will be explained in later chapters.¹⁶

¹³ This lengthy title is divided into three sections and contains twenty-two articles.

¹⁴ Art. 2, par. 4.

¹⁵ Art. 79.

¹⁶ Below, Chapter xxxii.

Will this constitution endure? It would be folly for anyone, either inside or outside France, to venture a prediction as to whether the constitution of the Fourth Republic is destined to have a brief tenure of life, like the constitution of the Second Republic (1848-1851), or a longevity akin to that of the Third Republic (1875-1940). As a fundamental law, the "October constitution" of 1946 does not satisfy any of the party groups but neither did its predecessor of sixty-six years earlier. Like the latter it is a bundle of compromises. Its survival must depend, in large measure, on whether it is operated by a government that is in sympathy with its provisions. Already there is a strong "revisionist" movement in France, especially among the conservative elements. In any event one should remember Herbert Spencer's admonition that "no philosopher's stone of a constitution can produce golden conduct from leaden instinct. A nation's institutions . . . are determined by its character."

The events leading to the establishment of the Fourth Republic are narrated in E. Hugot, *La IV République* (London, 1945); R. Aghion, *The Fighting French* (London, 1943); D. C. McKay, *France and the United States* (Cambridge, 1951); E. M. Earle (Editor), *Modern France: Problems of the Third and Fourth Republics* (Princeton, 1951); David Thomson: *Democracy in France, The Third and Fourth Republics* (2nd edition, New York, 1952). Boris Mirkine-Guetzévitch, *La quatrième République* (New York, 1946); Dorothy M. Pickles, *France between the Republics* (London, 1946); and by the same author, *French Politics: The First Year of the Fourth Republic* (London, 1953). An excellent and witty account of the constituent period of the Fourth Republic is Gordon Wright, *The Reshaping of French Democracy* (New York, 1948). See also F. Goguel, *France Under the Fourth Republic* (Ithaca, 1952); O. R. Taylor, *The Fourth Republic of France; Constitution and Political Parties* (London, 1951); A. J. Zurcher, *Constitutions and Constitutional Trends Since World War II* (New York, 1951). For recent studies in French, see J. Théry, *Le gouvernement de la 4^e république* (Paris, 1949); and L. Trotalas, *Manuel de droit public et administratif* (Paris, 1950). Mention may also be made of Roy Pierce, "France Reopens the Constitutional Debate," in *The American Political Science Review*, Vol. XLVI (June, 1952).

An English translation of the October (1946) constitution is published in convenient form by the Press and Information Service of the French Embassy, 972 Fifth Ave., New York City.

CHAPTER XXIII

The President of the Republic

The old kings of France reigned and governed. The constitutional king . . . reigns but does not govern. The President of the United States governs, but does not reign. It has been reserved for the President of the French Republic neither to reign nor to govern.—Sir Henry Maine

The chief of state. The presidency of the French Republic has long been the butt of epigrams at home and abroad. Clemenceau, who held the prime minister's post during the closing months of the First World War, once declared that there were two things for which he could never find any reason, to wit, "the prostate gland and the French presidency." And the Abbé Lantaigne, more savage in his characterizations, once dismissed the presidency from his writings as "an office with the sole virtue of impotence."

His high position. Yet in spite of this badinage the fact remains that the President of the French Republic is the titular chief of state and holds the highest political honor that a great nation can bestow. He is commander-in-chief of the armed forces on land, at sea, and in the air. He presides at sessions of the council of ministers, the superior council, and the committee for national defense. He may request the reconsideration of laws passed by the French parliament; but has no veto power. While it is true that the office does not carry powers commensurate with its dignity, it is none the less a post which the most eminent statesmen of France have sought and will doubtless continue to seek. It is regarded as the crowning honor of a great political career.

THE PRESIDENTIAL OFFICE

Chosen by the parliament. The President of the Republic is not elected by the French people. He is chosen by an absolute majority of the two chambers of the French parliament, sitting in joint session. The idea of having

the president elected by popular vote did not find favor with the men who framed the constitutions of either the Third or the Fourth Republics. They retained too vivid a recollection of what had happened in 1848, when the people were stampeded into electing a president whose chief ambition was to scuttle the republican form of government and turn France into an empire with himself at its head. In the convention which framed the constitution of 1946 there were a few members who desired to see France establish a presidential office on the American model, but they gained only negligible support for this idea. The tradition of parliamentary government had become too strong.

Term and re-eligibility. The president serves for seven years, and may be re-elected once. There is no popular sentiment against choosing a president to succeed himself. But a re-election took place only twice during the Third Republic, although on two other occasions a president would probably have been named for a second term had it not been for his own disinclination to continue in office.¹

Method of election. According to the provisions of the present French constitution the procedure by which the parliament chooses the president is briefly as follows: Not more than thirty and not less than fifteen days before the expiration of the president's term of office, the two houses (National Assembly and Council of the Republic) meet in joint session at Versailles in a wing of the great château erected by Louis XIV and make their choice by secret ballot. In the event that the National Assembly is dissolved during the interval above mentioned, as a result of a ministerial crisis, the outgoing president continues in office until a new Assembly is elected. If a president dies or resigns or is declared incompetent during his term of office, his duties are temporarily assumed by the president of the national assembly, but a new president must be elected within ten days. In France there is no provision for a vice president.

The caucuses which precede the vote. The election takes place without nominations, speeches, or discussion. This does not mean, however, that there is no maneuvering, bargaining, lobbying, and bloc-making in advance of the meeting. There has always been a great deal of it. Caucuses of the party groups are held and alliances or compromises are made among them. As will be indicated later, there are several political factions in France, but no one of them is strong enough to command a majority in the French parliament, so

¹ The list of presidents, with their terms of office, is as follows: *Third Republic*: Thiers, 1871-1873; MacMahon, 1873-1879; Grévy, 1879-1886, second term, 1886-1887; Carnot, 1887-1894; Casimir-Périer, 1894-1895; Faure, 1895-1899; Loubet, 1899-1906; Fallières, 1906-1913; Poincaré, 1913-1920; Deschanel, 1920; Millerand, 1920-1924; Doumergue, 1924-1931; Doumer, 1931-1932; Lebrun, 1932-1939, second term, 1939-1940; *Fourth Republic*: Auriol, 1947-1954; Coty, 1954-

they try to form combinations. Usually, but not always, the race gets narrowed down to two leading contestants, each supported by a bloc of party groups, and parliament merely makes its choice between these two. There is no popular campaign such as takes place in the United States, no primaries or nominating conventions, and no appeal by candidates to the rank and file of the voters. Were any candidate to make his appeal to the people, parliament would resent his doing so. The voters in France have no share in the election of the chief executive except insofar as they may, by the influence of public opinion, bring pressure to bear on the action of the members of the two parliamentary chambers.

Effect of the system on the caliber of candidates. This system of election does not ordinarily lend itself to the selection of strong, aggressive personalities. The successful candidate is usually a compromise choice—and it is not the habit of compromisers to pick strong men. Clemenceau once said ironically that he favored a certain candidate because of his “complete insignificance.” Vigorous leaders, with minds of their own, do not make good candidates under a system of election by party blocs. Nor, if elected, are such men likely to make good presidents—as the history of the Third Republic has shown on at least two noteworthy occasions.²

The election procedure. So the actual election, under ordinary conditions, is merely a dignified ceremony. The members of the Assembly and the Council, on the day appointed, troop out from Paris to Versailles where the joint session convenes in its great hall. An urn is then placed on the tribune or dais, and the names of all the members of the Assembly and the Council are called by a herald. Inasmuch as there are more than 900 names on the list, this solemn calling of the roll consumes a good deal of time. As each member's name is reached he walks to the tribune and formally deposits in the urn a slip of paper bearing the name of his choice for the presidency.³

Exclusions. Any French citizen is eligible to be chosen unless he has been deprived of his political rights by the judgment of a court, or unless he is a member of a family that has reigned in France during the royal or imperial epochs. This last-named exclusion was added to the constitution of 1875 by one of the amendments of 1884 and was repeated in the constitution of 1946. It was dictated, of course, by the fear that some Legitimist, or Orleanist, or Bonaparte might manage to get himself chosen president and thereupon repeat the *coup d'état* of 1851. The constitution does not expressly exclude women from being elected to the presidency.

² In the case of President MacMahon (1877) and President Millerand (1924). See below, p. 367.

³ In the constitution which the voters rejected during the summer of 1946 there was a provision which required that the election be by open voting, not by secret ballot. This was deleted in the October (1946) constitution. The open ballot provision had been included because it was feared that a number of Socialists might vote for De Gaulle if they could do so secretly.

First and second balloting. Official tellers, whose duty it is to count the ballots, are drawn by lot from the entire membership, and in an adjoining room they commence their work as soon as the last name has been called. If, when the result of the vote is announced, it appears that someone has received an absolute majority of all the votes cast, he is forthwith declared elected; but if no one has met this requirement of an absolute majority, the Assembly proceeds to ballot a second time, and if necessary it keeps on balloting like an American party convention until a choice is made. As a rule, however, the first ballot is decisive, because a sufficient bloc has been pledged in advance. On only three occasions during the Third Republic was a second ballot necessary, and in no case was there need for a third ballot.⁴ At any rate the newly elected president is installed at the close of his predecessor's term, but if he has been chosen to fill an unexpected vacancy he takes office at once.⁵

Honors and emoluments of the office. Judged by the honors accorded him at his election and thereafter, the President of the Republic is a very exalted personage. He is saluted by one hundred guns (the President of the United States gets only twenty-one); he travels in de luxe trains, and glittering brigades of French troops turn out to be reviewed by him wherever he goes. He has all the homage that is accorded to royalty in monarchical countries. During his term he has the use of the Elysée Palace as an executive mansion, and of the Château de Rambouillet as a country residence; he is provided with a presidential box at the opera and has other perquisites of various sorts. His salary is modest (three million francs per annum) but he receives twenty-seven million in addition for expenses. Bear in mind, however, that the franc is now worth only a fraction of a cent.

What kind of men become president. During its sixty-nine years of existence (1871-1940) the Third Republic had fourteen presidents. Several resigned before the expiration of their terms and three died in office. For the most part they were relatively old men when chosen, their average age being sixty and with their political careers behind rather than ahead of them. Those who typified distinguished mediocrity tended to fill the office of nominal executive with satisfaction. Others who did not give up the idea of actual power tended to run afoul of parliament and public opinion sooner or later.

Confusion of ideas about the presidency. A peculiarity of the French presidency is that it represented a compromise between the royalists and republicans who founded the Third Republic. Some hoped and believed that the new president would ease the return of the monarch, providing a president

⁴ Second ballots were required to re-elect Grévy in 1886, to elect Faure in 1895, and to elect Poincaré in 1913.

⁵ When chosen to fill an unexpected vacancy a president does not merely serve for the unexpired term. He serves out the full seven years. During the period of not more than ten days that may elapse between the death or resignation of a president and the election of a new one, the president of the National Assembly is acting President of the Republic.

were elected who would willingly step aside for a king or emperor when the time was ripe. Those who took this view hoped that the president would be strong vis-à-vis the legislature. Others saw in the president a purely nominal executive who would, like the English king, act as a symbol of national unity and preside over a government actually conducted by the responsible ministry. It was this latter view which in time prevailed, but not without some difficulty.

President MacMahon and the dissolution power. When the royalists secured the resignation of the first president, Thiers, and replaced him with Marshall MacMahon⁶ they hoped soon to have the gallant soldier step aside in favor of a king. The proposed monarch, the Count of Chambord, made unacceptable conditions regarding his return, and the president was prevailed upon to use his constitutional authority to dissolve the Chamber with the consent of the Senate. He did so on the sixteenth of May, 1877. The royalists had hoped to profit by the elections, but instead the republican element was strengthened. MacMahon then tried to keep in power a ministry unacceptable to the Chamber, but when the republicans secured a majority in the Senate by the elections of 1879 he was forced to resign. Thus ended the first attempt to set the presidency above the legislature. No subsequent president ever invoked the constitutional power to dissolve the Chamber. Indeed, had this power not become a dead letter, it is hard to see how the French government could have operated successfully for long. It would have been hopelessly split between president and prime minister.

Millerand and the presidency. The eleventh president, Alexandre Millerand, who took office in 1920, was known to favor a strengthened presidency which he evidently believed should be more like that of the United States. For a while he worked amicably with Premier Poincaré, but when the Chamber insisted on bringing about "ministerial crises" for reasons the president considered trivial he threatened the use of the dissolution power à la MacMahon. This was deeply resented, and when Poincaré lost control of the Chamber at the election of 1924, the man who logically should have formed the next government, Edouard Herriot, refused to do so under Millerand. No government was possible without Herriot, and Millerand was compelled, therefore, to resign. Thus ended the second serious attempt by a French president to change the parliamentary system into something else.

Lebrun (1932-1939; 1939-1940). The last President of the Third Republic was Albert Lebrun who, impressed by the defeatist arguments of Pétain and Weygand, appointed the former to the post of premier when Reynaud

⁶The descendant of seventeenth-century Irish immigrants to France, which explains his Hibernian name, MacMahon had been created Duke of Magenta by Napoleon III for his services in the Italian campaign.

resigned at the height of the crisis. It is easy to say that a strong and patriotic president such as Poincaré would have refused to accept such advice and would have transferred the government to North Africa. Doubtless this is so, but Lebrun was facing a situation of extreme confusion and desperation. Like many another of his compatriots he suffered from "failure of nerve." As noted above,⁷ the acceptance of Laval's plan at Vichy abolished the presidency.

Auriol (1947-1954). The first President of the Fourth Republic was Vincent Auriol, a life-long Socialist who had the supreme merit of being among the minority who voted against Pétain and Laval at Vichy. After a term of imprisonment under the Pétain dictatorship, he escaped to De Gaulle in London and subsequently held a ministerial post in the provisional government. In his memoirs, published in 1944, Auriol declared himself opposed to the proposal to augment the powers of the French president. In 1954, René Coty, an Independent, was elected to the presidency.

Why so few great and striking men? Men of all sorts have held the chief executive office in France, as they have done in America, and are likely to do in any republic. King Log and King Stork have both had their turn.⁸ In France, as in America, the critics complain that great and striking men are ignored for mediocrities. Gambetta, Ferry Dupuy, Waldeck-Rousseau, and Clemenceau failed to reach the Elysée, even as Webster, Clay, Calhoun, and Blaine failed to reach the White House. The reasons are much the same in both countries. Strong, aggressive personalities do not usually make good candidates. By being aggressive they create too many centers of antagonism. Party leaders prefer "safe" men who will not insist upon coloring the whole government with their own individuality. In France this is almost necessarily the case, for the experience of President Millerand showed that partisanship is wholly out of place in the presidential office. A man of strong political convictions will inevitably try to govern, which is what a French president is not supposed to do.

The answer is in the nature of the post. The Fathers of both the Third and Fourth Republics may have erred in providing that their nominal executive be chosen in a manner almost certain to confer the office upon an active politician. As has been noted above, this has occasionally meant the selection of men determined to exercise real power, with unfortunate results. An hereditary monarch, whose every public act is approved in advance by the prime minister and who owes office to the accident of birth, is generally willing to act merely as a symbol of national unity and to refrain from in-

⁷ See p. 352.

⁸ A clever portrayal of the earlier French presidents, by Professor Albert Guérard, under the heading, "In the Realm of King Log," may be found in *Scribner's Magazine* for February, 1925.

terference in political decisions, although there have been exceptions to this rule of royal behavior.⁹

Powers of the president: 1. In form. Under the parliamentary system the titular chief of state, whether king or president or governor-general, is always a *nominal* chief executive and does not actually govern. It is not altogether astonishing, then, to find that the President of the Republic, like the King of England, has, in form at least, a very impressive array of functions and powers. He designates the prime minister and the cabinet ministers and presides at meetings of the council of ministers. He nominates a great number of high officials including ambassadors, councillors of state, and so forth. He promulgates laws and has the right to request the reconsideration of a law after its passage in parliament. Under certain circumstances he acts with the president of the Council of the Republic to set up and preside over a constitutional committee to examine a law challenged as unconstitutional by the Council of the Republic. He dissolves the National Assembly upon the decision of the cabinet under certain conditions. He is titular chief of the armed forces, president of the superior council of the magistrature, and exercises the right of pardon.

Powers of the president: 2. In fact. These impressive powers are exercised in accordance with a limitation imposed by Article 38 of the constitution: "Each official act of the President of the Republic must be countersigned by the Premier and by a Minister." Students of parliamentary government will understand readily enough that this clause reduces the office from one of almost dictatorial powers to one of little more than nominal authority. It is clear that the real executive power is in the hands of the premier and his cabinet.

In certain respects he has fewer powers than he enjoyed under the Third Republic. He no longer has the duty of seeing that the laws are faithfully executed, which now falls upon the premier. As noted above, he cannot dissolve the National Assembly on his own initiative as his predecessors, in form at least, could dissolve the Chamber of Deputies.

A comparison with the king of England. His real function is chiefly to serve as a symbol of national and republican unity. But he is more than a symbol and is a more independent official than the British king. Because of the French party system he may well be able to choose between two or more possible premiers during a "governmental crisis." As the king may not be, he is always an experienced and respected elder statesman whose speeches may

⁹ When Leopold, King of the Belgians, insisted upon retaining his throne despite the vigorous opposition of a large minority of his subjects, he was violating the fundamental principle of modern constitutional monarchy by injecting himself into politics and dividing instead of unifying his country. His subsequent act of abdication was properly in line with that principle.

have political influence and who can speak in public without the previous approval of the premier.¹⁰ His advice may have considerable influence upon the government. As president of the constitutional committee and the superior council of the magistrature, he is seen in the rôle of guardian of the republican institutions. He can exercise a veto upon unworthy judicial appointments and makes the final decision himself in exercising the right of pardon.

A royal analogy. To the mind of the average American, the term "republic" suggests a particular form of government, namely, the antithesis of monarchy. Anything that calls itself a republic, most Americans seem to think, must be something like the American republic. But there is no magic in terminology. You can have a republic that is a monarchy in everything but name. And that is the sort of republic which the French people have chosen to set up. It is a unitary republic, wholly unlike that of the United States, which is federal. It is a parliamentary republic, wholly unlike that of the United States, which is presidential. It is a republic without a system of checks and balances. It is a republic without the distractions of a presidential campaign every four years. It is a republic in which the lower chamber of parliament (as in Great Britain) is virtually supreme. It is a republic which forms the center of an imperial commonwealth known as the French Union. So, despite its republican nomenclature, the government of France bears a closer resemblance to that of Great Britain than to that of the United States.

Powers in relation to the chambers: 1. The initiative in lawmaking; what it amounts to. The constitutional laws of 1875 gave the French president the right to initiate proposals of legislation; but this meant nothing, for he could only initiate through his ministers. And it was simpler for the ministers to bring in the proposals directly. This situation is recognized in the constitution of 1946 by expressly giving the initiative to the head of the ministry (as well as to individual members of parliament). In France it is not the custom of the president to address either of the two chambers in person, but he may communicate with them by sending messages to be read from the tribune by some member of the ministry. No president during the past sixty years, however, has ever sent such messages except to express thanks for his election or to announce his resignation. There is no point in his sending a message of any sort, for it would have to be countersigned by a minister; which means that it would amount to nothing more than a ministerial communication.

2. The suspensory veto. The new French constitution, like its predeces-

¹⁰ In July, 1948, President Auriol gave a statement to the press regarding his nomination of André Marie to the premiership and including a résumé of his remarks to M. Marie, which remarks amounted to a comprehensive suggestion as to what the new premier's program should be, who should serve in his cabinet, and what sort of majority he should strive for.

sor, also gives the president a suspensory veto power. When a law has been passed by both branches of the French parliament it does not go into effect at once. It must be officially promulgated, that is, published, by the president and declared to be in force. This is ordinarily done within ten days, but if parliament designates the law to be urgent the president must promulgate it within five days. If, however, he disapproves the measure, he is empowered to withhold promulgation and return it to the chambers for reconsideration. Then, if they stand their ground, he must promulgate the measure at once. No two-thirds vote of the chambers is necessary in France, as in the United States, to override the president's veto. As an additional safeguard against executive recalcitrancy, the French constitution provides that if the President of the Republic finally declines to promulgate a law, the president of the National Assembly shall do it.

It has never been exercised. The suspensory executive veto in France has been of no consequence because it has never been exercised. No president during the Third Republic ever sent back any measure for reconsideration. The reason is that he could not take such action except on the advice of his ministers, and these ministers are in control of the French parliament, otherwise they would not be ministers. So, if the ministers disapprove a measure they oppose its passage in the National Assembly, and if they do not succeed in defeating it they resign from office. Save under very unusual circumstances they could hardly let a measure pass through parliament and then advise the president to send it back for reconsideration. The retention of the suspensory veto in the new French constitution would seem to indicate that there is in France no clear understanding of the implications of ministerial responsibility.

3. The ordinance power. All this must not be understood to imply, however, that the real executive in France has no influence on the process of law-making. The president neither proposes laws nor vetoes laws; but his ministerial advisers have a considerable part in the elaboration of laws after they are passed. This is because there has been developed in France a form of legislative activity with which Americans are becoming familiar, namely, the practice of supplementing laws by the issue of ordinances, decrees, executive orders, and administrative instructions. The laws passed by the French parliament are usually couched in general terms. They do not try to include every detail or to provide for every contingency that may arise. On the contrary, they lay down certain broad principles and leave the details to be supplied by executive decrees.

Their scope. These decrees must not, of course, modify any substantive provision of the law; but so long as they keep within its general phraseology they can stiffen or liberalize the details at will. Any controversy as to whether

the ordinance is out of harmony with the general provisions of the law goes to the highest administrative court for decision, that is, to the Council of State.¹¹ And as a safeguard against later invalidation, all ordinances of public administration are submitted to the Council of State for scrutiny before being promulgated. All this gives the executive branch of government a good deal of influence upon the details of legislation, although one should hasten to add that the president himself takes no responsibility for the drafting of decrees or ordinances. The work is done by his ministers.

For the most part the French parliament has been disinclined to confer broad discretionary powers upon the executive branch of the government. But it has done so at times, especially in emergency situations. One occasion was in the spring of 1937 when the Chautemps ministry demanded and obtained, for a limited period, the right to issue decrees without the necessity of keeping them within the bounds of existing laws. A critical situation in French public finance seemed to make the exercise of such powers desirable.

Executive legislation in America. Americans who go to France have observed the billboards covered with *affiches*, embodying decrees issued by ministers, prefects, subprefects, mayors, officials of all ranks from the president down. This leads them to remark that the French appear to have a free-for-all scheme of lawmaking, and congratulate themselves that there is nothing like that in the USA. But they are wrong. There is a good deal of it in the United States. Congress leaves a great many things to be settled by executive orders and regulations. Take the immigration laws, the postal laws, the laws governing interstate commerce, the federal tax laws, the labor relations laws, and the whole category of regulatory laws that have been enacted in recent years. Executive orders in the United States are not posted upon the billboards, but there are whole volumes of them, as every lawyer knows. When the secretary of the treasury, "by order of the president," issues a set of rules with reference to the reporting of incomes for taxation, he is doing precisely what the French ministers do by ordinance or decree. Executive orders and regulations are becoming as plentiful in America as in Europe.

4. The appointing power. The higher civil officers of France, including the councillors of state, ambassadors and special envoys, government representatives in overseas territories, chiefs of the central administrative services, and prefects of the departments are appointed.¹² But the actual appointing power resides in France just where it resides in England. In neither country is there much, if any, personal discretion on the part of the titular chief executive. In France the constitutional stipulation is that the president shall appoint

¹¹ See below, Chapter xxx.

¹² Art 30.

the above-named officials "in the council of ministers," in other words, with that body's concurrence. It is true that during the Third Republic the president sometimes recommended certain candidates to the favorable attention of the ministers, just as any citizen of the republic has the right to do; but the ministers were under no obligation to heed his recommendations. An appointment was virtually made when the ministers agreed on it, and sometimes it was publicly announced before the presidential decree had been prepared. Casimir-Périer, during his short and fretful term of office, complained that his first knowledge of high appointments occasionally came to him through the morning newspapers, the ministerial nominations reaching him later in the day. This, of course, will not happen now, when the president occupies the chair at meetings of the council of ministers.

Prior to 1940 the head of the ministry, or prime minister, was appointed by the President of the Republic. Then the appointee selected the other ministers and went before the Chamber of Deputies for a vote of confidence. Sometimes he failed to get this. Sometimes, after consultation with the leaders of the various party groups in the Chamber, he decided that a vote of confidence would not be forthcoming, in which case he went back to the president with his resignation. Under the new constitutional arrangements all this will be avoided. The President of the Republic no longer appoints the head of the ministry (president of the council of ministers), but merely nominates him. His appointment does not take effect until after the National Assembly confirms him.¹³

Subordinate appointments. Appointments to positions other than those specified in the constitution are made by the president of the council of ministers. Ordinarily no new positions may be created except by action of parliament, which alone has power to appropriate money for salaries; but in certain contingencies new offices may be established by decree. Parliament also prescribes the qualification for every office, and it has dealt with such matters at great length. In France, as in other countries, the power to grant pardons is given to the chief executive. This authority he exercises as presiding officer of the superior council of the judiciary. The constitution expressly provides, however, that an amnesty (that is, a general pardon to all offenders of a designated class) may not be granted except by a law.

5. The president as commander-in-chief. The President of the Republic is commander-in-chief of the army, the navy, and the air forces. But "the direction of the armed forces" is placed in the hands of the president of the council of ministers—a rather strange arrangement.¹⁴ The size of the military,

¹³ See also below, p. 378.

¹⁴ Probably inserted to emphasize the purely honorary character of the title held by the President of the Republic.

naval, and air establishments, however, is determined by parliament, which fixes the annual quota of recruits and appropriates the money required by all branches of the service. By the provision of the French constitution, a declaration of war requires the assent of both chambers; but it is self-evident that the ministers, who control both the diplomatic policy and the disposition of the armed forces, may create a situation in which the chambers have no alternative but to give this assent. The same is true in the United States where Congress alone can declare war, but where the president and his cabinet can force a controversy to a point at which no congressional discretion would remain.

6. His relation to foreign affairs. In international relations, however, the President of the Republic is a figure of far less importance than is the President of the United States. It is true that ambassadors who come to Paris as the diplomatic representatives of other countries are accredited to him. It is also true that, in form at any rate, he appoints the French ambassadors at other capitals. The instructions to these diplomatic representatives are also given in his name. But the actual framing of the instructions is in the hands of the minister of foreign affairs and his immediate subordinates. So it is with treaties. They are negotiated, in the name of the president, but virtually all those of importance require ratification in parliament before becoming valid.¹⁵

How the president may be removed from office. The French president is not amenable to the jurisdiction of the ordinary courts. He may not be arrested, tried, or condemned for any offense, civil or criminal.¹⁶ But provision is made for his impeachment in case he is charged with the crime of high treason. He may be indicted by the National Assembly and arraigned before the high court of justice. An absolute majority is sufficient to indict, and no limit is placed upon the penalty which may be imposed. French procedure thus differs from that laid down by the Constitution of the United States, which confines the entire process to the legislature, requires a two-thirds vote for conviction and restricts the penalty to removal from office and disqualification. No President of the French Republic has ever been impeached.

The president and the prime minister. The narrowness of the president's part in legislation, in making of appointments, and in the conduct of foreign affairs must not be overemphasized. For be it borne in mind that the president nominates the head of the ministry (who, in turn, selects the other ministers) and he sometimes finds himself able to exercise some discretion in

¹⁵ Art. 31 states simply: "The President of the Republic is kept informed of international negotiations."

¹⁶ However, some authorities believe that under the new constitution he may be personally liable before the courts for actions having no relation to his office.

making the choice. This is because there is no dominant party in the French Assembly but only a dominant bloc. And this bloc may contain more than one leader who is in a position to command its support. On such occasions the president may use his own judgment in making the nomination. Such occasions will necessarily be infrequent and in any event the president's range of choice is not likely to be very wide, even then. Usually he will confer with the leaders of the party groups in the National Assembly, obtain their advice as to the man who is best qualified to form a new ministry, and then follow it. Remember, too, that the president is himself no tyro in practical politics. He has had to do with parties and factions and blocs.

The future of the presidential office; the alternatives. Many Frenchmen are far from satisfied with the role which France has traditionally given to the nation's chief of state. "It is a fundamental principle of the constitution," said one cynical writer a good many years ago, "that the president shall hunt rabbits and not concern himself with affairs of government." The constitution of the Fourth Republic does not change this situation materially. There are some, including General de Gaulle, who argue that the presidential office should either be abolished altogether, or else made a position of real power, as it is in America. In times past some of the radical party groups have urged the substitution of a plural executive as in Switzerland, and on one occasion a constitutional amendment to this end was proposed in the National Assembly, but it was ruled out of order.

Where the difficulty comes. The difficulty is that no one has been able to suggest a way of increasing the president's authority without completely changing both the form and the traditions of French government. A ministry must be responsible either to the chief executive or to the legislative body. It cannot be responsible to both, for no ministry can serve two masters. There is no way to increase the authority of the president except by taking power from the ministers, and through them from parliament. This, of course, the French people have never been inclined to favor. On more than one occasion during the past seventy years a French president has made a gesture in the direction of extending his own powers, but in no case did he receive either parliamentary or public support.¹⁷ So the President of the Republic remains, in the Fourth Republic as in the Third, a *roi fainéant*—a do-nothing king without a crown.

The position and powers of the presidency in the Third Republic are fully discussed in Adhémar Esmein, *Droit constitutionnel français* (8th edition, 2 vols.,

¹⁷ For an account of a strong president see Gordon Wright, *Poincaré and the French Presidency* (Stanford, 1942).

Paris, 1927), Vol. I, pp. 32-207; Maurice Hauriou, *Précis de droit constitutionnel* (2nd edition, 5 vols., Paris, 1921-1925); as well as in J. Barthélemy and P. Duez, *Traité de droit constitutionnel* (revised edition, Paris, 1933).

Historical data may also be found in G. de Lubersac, *Les pouvoirs constitutionnels du Président de la République* (Paris, 1911); Jean Devaux, *Le régime des décrets* (Paris, 1926); Henri Leyret, *Le Président de la République*. (Paris, 1912); Robert Valeur, *French Government and Politics* (New York, 1938); and Herman Finer, *The Theory and Practice of Modern Governments* (2 vols., New York, 1932), Vol. II, pp. 1128-1144.

On the characteristics of the presidents see E. A. Vizetelly, *France: Her Presidents, Statesmen, Policy, Vicissitudes and Social Life* (London, 1941); H. L. Middleton, *The French Political System* (New York, 1933), chap. ix; Gordon Wright, *Raymond Poincaré and the French Presidency* (Stanford, 1942); and the various histories of the Third Republic mentioned at the close of the previous chapter.

For discussions of the presidency in the Fourth Republic, see Herman Finer, *The Theory and Practice of Modern Government* (revised edition, New York, 1949), pp. 629-630, 635-638, and George Vedel, *Manuel élémentaire de droit constitutionnel* (Paris, 1949), pp. 427-434, 488, 489.

CHAPTER XXIV

The Ministry and the Administrative System

France is governed, eight months of the year by a parliament, and four months of the year by a ministry.—Emile Faguet

The derivation of a term. Many years ago Raymond Poincaré, at that time minister of finances, was strolling along a country road in one of the French provinces when he heard a voice cry out from behind him: "Get along, you lazy minister." Less surprised at being insulted than at being recognized, he turned around and saw a peasant trying to make a donkey move faster. "There's no making this minister go," growled the peasant. Thus M. Poincaré learned that in certain corners of France an ass is called a *ministre*, not out of disrespect for this humble beast of burden, but because he is the chief servant of the peasantry, entrusted with all manner of work that needs to be done. And after all, Poincaré goes on to ask, are not cabinet ministers the servants of the nation? For the term "minister," in Latin, means the "lowliest," just as its antithesis ("magister") means the "greatest."

The basis of a minister's responsibility. The ministers of the Republic are the servants of the people, accountable to the representatives of the people in parliament. In France, as has been shown, the president is chosen by the two chambers in joint session, but is not responsible to either of them. He cannot be brought to task for an official act. There is only one way in which parliament can directly exert its power upon the president, which is by impeaching him for high treason, a procedure reserved to the National Assembly. The President of the Republic is thus in the position of a constitutional monarch. He can do no wrong, or at any rate no wrong that is cognizable in the ordinary way. But if the president stands above the reach of the chambers, his ministers do not, and it is through them that the French parliament exercises a full and uninterrupted control over the president's official

acts. In England this control is the outcome of long-standing usage; in France it rests upon the explicit terms of the constitution.

What the French constitution now provides. The constitution of 1946 provides (1) that "every act of the President of the Republic must be countersigned by the President of the Council of Ministers and by a minister," and (2) that "the ministers shall be collectively responsible to the National Assembly for the general policy of the Cabinet and individually responsible for their personal actions." Here, in forty-seven words, is an attempt to set down the essential principles of cabinet responsibility as they have been slowly evolved in England during a period of several hundred years. The chief of state is not responsible to the representatives of the people, but he must act through ministers who are responsible. Thus the French constitution, in explicit terms, requires the ministers to exercise the functions of the presidency, just as in England usage requires the cabinet to exercise the functions of the crown. In the United States, by way of contrast, there is no requirement, either in the constitution or by usage, that the president's orders shall be countersigned by anyone who is responsible to Congress.

ORGANIZATION OF THE MINISTRY

How a prime minister is selected. The French constitution makes provision for a council of ministers, but does not prescribe how many ministers there shall be. The President of the Republic, as has already been mentioned, *nominates* the head of the ministry. He, in turn, chooses his fellow ministers for confirmation by the National Assembly. According to a provision of the constitution, a question of confidence in the Assembly cannot be voted upon until one full day after it has been presented. The official title of this functionary is not prime minister, but president of the council of ministers. As for the procedure in selecting him, it is much like that followed in England. The president picks his man and requests him to undertake the task of getting a vote of confidence in the National Assembly. That done, he merely awaits the outcome.

To what extent may the president pick and choose? In making this nomination the President of the Republic has never had, nor is he likely to have, any wide freedom of choice; but he has more latitude than is given to the king in Great Britain. There the king must send for the recognized leader of the Opposition in parliament. But in France there is often no recognized leader in the opposition, or, to put it more accurately, there may be several who have approximately equal claims to be regarded as leaders. This is because there are at least a half dozen party groups, big and little, in the National Assembly, each with its own leader, and sometimes with more than

one leader. Several parties are usually combined into a bloc; but the bloc does not always have a single leader who is so recognized by all those composing it. In such cases the President of the Republic is able to use some discretion in determining which one of these various leaders he will nominate to form a new ministry.

Occasionally he has discretion. The President of the Republic is assumed to be a neutral in politics; he must show no favoritism. Occasionally he is fortunate enough to have available two or three good politicians, any one of whom would probably be able to form a working coalition among the various party groups. In that case the president can use his own judgment and summon any one of them.¹ But this opportunity will not come to him very often.

The process of forming a ministry. At any rate, having settled upon his man, the president summons him to the Elysée and requests permission to send his name to the National Assembly for confirmation as head of a new ministry. The nominee then hastens to confer with the leaders of two or more party groups, and by offering each group certain assurances in matters of public policy, as well as some representatives in his ministry, he endeavors to assure himself of a confirmation.

The pourparlers with party leaders. According to the gossip that is usually reported in the Paris newspapers during a ministerial crisis, all his hours are spent in a hurried round of interviews, overtures, *pourparlers*, and solicitations. He finds that one leader will come into his ministry if another is brought in. The *démarches* may go on for several days before the prime minister succeeds in getting his slate made up.

The final slate. Under the Third Republic, the Chamber's vote of confidence did not take place until after the various ministerial posts had been filled and their names announced in the official journal. Thus the whole ministerial team was subjected to scrutiny. Under the new procedure, the man nominated as chief minister by the President of the Republic appears before Assembly and outlines the policies which he intends to pursue. This he does before any ministerial appointments are announced. Thus, Ramadier was confirmed as the first constitutional prime minister of the Fourth Republic on January 21, 1947, but did not announce his cabinet until the following day.² It is very doubtful whether he himself could have obtained a vote of confidence

¹ A recent example is provided by the choice made by President Auriol when the Schuman cabinet fell in July, 1948. Any one of several leaders might have secured the approval of the National Assembly. The president chose André Marie because he believed that a moderate Right Center government was desirable at the moment.

² A new prime minister is appointed by presidential decree with the countersignature of the retiring prime minister.

by absolute majority in the Assembly if he had been required to announce his slate of ministers in advance of the vote.

French ministers do not need to have seats in parliament. It is not necessary in France, as in England, that all members of the ministry shall be members of parliament. Nor, on the other hand, are they forbidden to be members, as in the United States. The constitution of 1946 is silent on this question of membership. But as a matter of usage, and of practical necessity, the prime minister has always been chosen from among the leaders in parliament, and almost invariably he has been a member of the controlling chamber. With rare exceptions, too, the ministers are selected from among the leaders of party groups in parliament. In the early years of the Third Republic it was thought advisable to select the minister of war from among the high officers of the army, and the minister of marine from the list of French admirals; but this practice was not always followed in later years.

Size of the ministry. The size of the ministry is not fixed by constitutional provision. Within certain limits the prime minister (president of the council) decides how many members there shall be in each new ministry. The silence of the laws does not imply, however, that the National Assembly has no control over the size of the ministry. On the contrary it can reduce or increase such membership at any time by virtue of its control over the appropriations for ministerial salaries. When, therefore, the prime minister decides on the size of his ministry, his action is contingent upon the readiness of parliament to vote the sums required.

The existing portfolios. Before the First World War the French ministry contained twelve members; during the war the number was shifted several times. After 1918 it settled down for a time to about fifteen. Then it was increased somewhat. The first ministry of the Fourth Republic (1947) had twenty-one members, namely, the ministers of foreign affairs, national economy and finance, interior, justice, war, armaments, industrial production, reconstruction, agriculture, education, public works and transport, communications, overseas France (formerly colonies), labor, public health, veterans' affairs, "youth, arts and letters," and food, besides the president of the council (who also held the post of minister of defense) and two vice presidents of the council who were ministers without portfolio—making twenty-one in all.

The Bidault cabinet of November, 1949, had but eighteen full cabinet ministers. One of the vice presidents was also minister of the interior. A minister of state in charge of information was added, but there were no ministers for war, armaments, or youth, arts and letters. The latter post had been demoted to a secretaryship, as had the army.

The prime minister may select any one of the foregoing departments for

himself and thus act in a dual capacity, but when he does so the selected post is always a very important one such as foreign affairs, national defense, or finance. Until recent years the prime minister had no regular secretariat to assist him, but in 1936 provision for such an institution was made by presidential decree. Under the Fourth Republic it has apparently become a fixture and has grown in influence. Its staff consists of a secretary-general and numerous subordinates, some of whom are permanent members of the secretariat while others are assigned on detached service from the regular ministerial departments. Its offices are in the building which is provided for the president of the council as his headquarters.

It is not easy to describe in detail the individual functions of these numerous ministers because some of them are frequently changed. The present list of ministerial portfolios is strongly imprinted with the marks of a postwar era, with the inevitable urgency of such problems as reconstruction, industrial production, food and veterans' affairs. In most cases the general functions are fairly well indicated by the name of the department, but in a few instances this is not the case. The minister of the interior in France, for example, has duties widely different from those which are devolved upon the secretary of the interior in the United States.

It has been mentioned that the head of a ministry may choose any portfolio for himself, but he has never chosen that of justice. During the Third Republic the minister of justice was usually a member of the Senate and served as vice president of the council of ministers. Moreover, he was president of the Council of State (*Conseil d'Etat*) or highest administrative court in France. Now he no longer serves as vice president of the council of ministers. Nor does he any longer nominate judges of the regular civil courts for appointment by the president. As will be seen later, these nominations are now submitted by the superior council of the judiciary. But the minister of justice continues to be the government's chief legal adviser and attorney-general.

1. The minister of foreign affairs. The minister of foreign affairs conducts the relations of France with other countries; he has supervision of the diplomatic and consular services. The post is of such high importance that the prime minister in the past has frequently taken it for himself, and in any event this portfolio carries a great deal of prestige. On the other hand the field of foreign relations is one in which the entire ministry expects to be consulted when important issues arise. The minister of foreign affairs, even when he is also premier, does not by any means have a free hand in the determination of foreign policy. He is influential, of course, in the making of this determination, but his main function is to carry out ministerial policies after they have been decided.

2. The minister of the interior. The minister of the interior is the general supervisor of local government in France. All the prefects report to him; and the work of the local police throughout the republic is under his direction. He is sometimes referred to as the "minister of public order," which is a more descriptive designation than the one which he officially bears. His office has had a great deal of importance because the prefects have been political as well as administrative agents of the ministry and traditionally have exerted a considerable amount of influence in the election campaigns. More will be said about these officials in a later chapter.³

3. The minister of national economy and finance. The minister of national economy and finance is a chancellor of the exchequer and secretary of the treasury combined. He prepares the budget and presents it to the National Assembly. He is responsible for the collection of the national revenues; he has charge of expenditures and loans, and supervises the currency and banking. In addition he is responsible for the management of the government monopolies, particularly the tobacco monopoly. On the other hand, he does not have, like the British chancellor of the exchequer, any authority to reduce or eliminate estimates of expenditure sent to him by the various departments. If he disagrees with the latter it is the council of ministers that resolves the disagreement.

4. The other ministers. It would serve no useful purpose to attempt even a general enumeration of the functions performed by the other individual members of the ministry. In the case of some of the newer ministries, their authority has not been clearly defined, and in some cases the ministry itself may be temporary. Social security has been added to the labor portfolio. Communications was for a time demoted from ministerial rank and headed by a secretary of state in the Queuille cabinet and restored to its former status under Bidault. It is reasonably certain that the ministry of overseas France will exercise much less authority than was given to its predecessor, the ministry of colonies. This is because of the greatly enlarged degree of local self-government which is being given to the overseas territories in the French Union. It remains to be determined, again, just where the bounds of authority will be maintained between the old ministry of education and the new administrative department which has been given the rather compendious designation of "technical training, youth and sports."⁴ It should be mentioned in this connection that France has not been in the habit of entrusting the handling of new problems to independent boards, which is so extensive a practice in the United States. There are some such boards in France, it is true, but in the main, when new administrative machinery is needed, the tendency

³ See below, Chapter xxxi.

⁴ Handled by a secretary of state.

is to create it within one of the existing ministerial departments, or, if need be, to create a new portfolio. Or, if the problem seems to be of a temporary character, it may be delegated to one of the ministers of state, as the ministers without portfolio are now usually called, to be handled by him.

The foregoing paragraph should not be construed to mean that the French government has failed to make use of boards. There are numerous boards serving in a consultative capacity to members of the ministry. But they are consultative or advisory only. As a rule they are composed of both officials and laymen. This is an arrangement which enables the ministry to keep the power in its own hands while obtaining information and advice on technical problems from persons who are better qualified.

The working day of a minister. The conscientious minister, Poincaré once wrote, has his day well filled. In the morning, when he enters his study, he finds a formidable mass of correspondence on his desk. The correspondence which is not addressed to him privately is of course opened by secretaries, but a large number of letters remain which he is compelled to read through. Most of these come from members of parliament, who have acquired the annoying habit of recommending people for every kind of official favor. Then there are interviews with members of his staff, or with members of parliament, and an interminable procession of other people soliciting favors. On days when the ministry holds a meeting, he spends most of his morning attending it. After lunch, when the parliament is in session, he goes to the Assembly or the Council of the Republic if he is a member (as is usually the case), or if these bodies are considering any measure in which he is interested. When he returns he finds the desks and tables in his office loaded with great portfolios, crammed with every kind of document. These are orders or decrees prepared by the different branches of his department, awaiting the ministerial signature. If he does not choose to sign them blindly, he must spend long hours delving through these piles of papers. Sometime during the day he will probably have to meet with his *cabinet de ministre* or personal secretariat which consists of a small staff of functionaries who are appointed by and responsible to the minister himself. It serves as a liaison agency between the minister and the various bureaus under his control. Finally, there are party conferences and various social functions which even the busiest minister feels under obligation to attend. To acquit himself decently of a task so varied, it is not enough to possess sagacity. Unless the minister is gifted with a great appetite for work and a rare promptness of judgment he will be merely the tool of his underlings who get things ready for him.⁵

A minister's threefold position. In France each minister occupies a

⁵ Raymond Poincaré, *How France is Governed* (New York, 1913), pp. 198-199.

threefold position. He is the individual head of a department, a member of the council of ministers, and a participant in the work of parliament. The constitution provides that the ministers have *ex officio* the right to attend sessions of either chamber whether they are members or not. When they request to be heard either on the floor or in committee, this request cannot be refused. Thus a minister who is a deputy in the Assembly may speak also in the Council; while a minister who is a member of the Council must be heard by the Assembly when he so desires. And a minister who has no seat in either chamber may nevertheless attend and speak in both. This is an interesting and significant feature of French government which existed under the Third Republic and has been retained in the Fourth.

The undersecretaries; their status. The ministers do, in fact, attend the parliamentary sessions regularly, especially in the chambers to which they individually belong. They spend a good deal of time either at the Luxembourg or at the Palais Bourbon when parliament is sitting. During the later years of the Third Republic there developed the habit of providing certain ministers with undersecretaries who not only helped their chiefs in the performance of administrative duties but attended sessions of parliament or of committees when ministers so desired. Although these undersecretaries have never been members of the ministry, they are more or less regularly summoned to its meetings in order that they may give their advice on matters concerning which they have special knowledge. These undersecretaries have been usually, but not always, members of parliament; but in any case they have been permitted to speak in either chamber. This is not a matter of constitutional right, as in the case of the ministers, but only a privilege granted them by the custom of the legislative bodies.

Their responsibility. The undersecretaries are not permitted to countersign and thereby take responsibility for actions of the President of the Republic, nor can they issue ministerial decrees over their own signatures. If the minister himself is unable to countersign or sign (through illness or absence), the prime minister designates some other member of the ministry to act in his stead. When a ministry goes out of office the undersecretaries and the members of the *cabinet de ministre* go too, but all other administrative officials remain.⁶ This permanence of tenure among the administrative staff, in all its subordinate ranks, is of great consequence to the orderly conduct of business in France, where ministries have changed so frequently that the whole fabric of administration would long since have broken down were it not for this official stability on the part of those who do the routine work.

⁶ Most members of the minister's *cabinet* are officials who have been borrowed from other branches of the government service and when a change of ministry takes place they merely return to their former posts.

Secretaries of state. A new kind of subminister, half way between a cabinet minister and an undersecretary, came into existence during the Vichy regime and has persisted in the Fourth Republic. These are the secretaries of state who owe their authority to an appointment by the premier and to an assignment of duties and powers by the premier or the minister under whom they serve. There were fourteen of them in the Queuille government, nine in that of Bidault. They normally attend meetings of the cabinet (unlike under-secretaries), although they appear at the formal sessions of the council of ministers only when required. They serve to assist the ministers with a part of their responsibilities. For example the minister of national defense customarily is assisted by three secretaries of state, one for each of the three defense departments. These officers also help to spread party participation at the cabinet level for they are normally members of a different party from that of their minister.

Meetings of the council of ministers. The council of ministers is called together two or three times a week, and sometimes oftener, depending on the amount of business there is to be done. There are two kinds of meetings, formal and informal. At formal meetings the President of the Republic presides and the constitution stipulates that he shall keep the council's records in his own possession.⁷ These formal meetings are held at the Elysée, the President's palace. But informal meetings of the ministers and secretaries of state are also held at the prime minister's headquarters, a spacious building in the center of Paris, which was acquired by the government in 1934 and fitted with offices and salons, including a room for ministerial meetings. At these informal or "cabinet" meetings, the president of the council presides, or, in his absence, one of the vice presidents. The real decisions of the ministry are made at these meetings; the policy of the ministry is there determined upon, and matters are put in form for final ratification at the more formal sessions. In neither case, however, are the discussions made public; the proceedings are strictly secret as in England and in the United States. After each session of the council of ministers, however, the newspapers are given a brief summary in which, as one premier has said, "all mention of important questions is usually omitted."

New developments in cabinet meetings. A new development is the tendency for "interministerial councils" to be held. These are simply partial cabinet council meetings where several ministers and secretaries of state can discuss interdepartmental problems more freely than in a full cabinet meeting. There is also a trend, already observed in Britain, toward what the French call

⁷ It is amusing to note that despite his great powers, one thing that the president of the council of ministers does *not* do is to preside at formal meetings of the council of ministers.

selection of the most important ministers only to discuss the gravest and broadest issues.

Position of French and English prime ministers compared. The French prime minister has never been a dominating head of the government in the English sense. In constructing his ministry he is often under the necessity of coaxing some of its members in, and having done this he is in no position to order them around. The new constitution gives him more authority than the old one did, but it does not relieve him from the necessity of satisfying the leaders of two or more party groups in the National Assembly. Individual members of his ministry are well aware of the fact that at a critical juncture they can oust their premier from office by merely tendering their resignations and rallying their copartisans to vote against him in the Assembly. And this does not mean (as in England) that they lose their jobs, for they often have a good chance to become members of a new ministry, with some other prime minister at its head. A "new ministry" in France has rarely been a new one in the English or American sense. Usually it has been merely a reshuffling of an old one.⁸

MINISTERIAL RESPONSIBILITY

One chamber or both. By the constitutional laws of 1875, the French ministers were made jointly and individually responsible to both chambers—the Senate and the Chamber of Deputies. This, as any student of parliamentary government could have foreseen, proved to be an unworkable arrangement. Neither a man nor a ministry can serve two masters. So the principle of ministerial responsibility was interpreted to mean, under normal conditions, responsibility to the Chamber of Deputies alone. On more than one occasion the Senate voted its lack of confidence in a ministry without causing the latter to resign, but in no case did a ministry continue in office after such a vote in the Chamber. Yet the theory of ministerial responsibility to the Senate remained in existence, and there were several instances in which the senators forced a ministry out of power by refusing its assent to legislation which the ministers had sponsored. The last occasion was in 1927 when the Léon Blum ministry gave up after the Senate refused to grant it a widened range of financial authority.

The issue now settled? The framers of the new French constitution in 1946 recognized the anomalous nature of this dual responsibility and put an end to it by expressly providing that "the ministers shall be collectively responsible to the National Assembly for the general policy of the cabinet and

⁸ For data on the reshuffling of ministerial posts during the Third Republic see C. J. Friedrich, *Constitutional Government and Politics* (New York, 1937), p. 348.

individually responsible for their personal actions." To make assurance doubly sure they added a stipulation that the ministers "shall not be responsible to the Council of the Republic." But they did not make ministerial responsibility as complete as it is in Great Britain. Across the Channel the vote on a question of confidence in the ministry may be proposed in the House of Commons by any member; it can be taken without delay, and is determined by a mere majority of those commoners who are present. In France the constitution now provides that a question of confidence can be put only by the president of the council of ministers; the vote on the question cannot be taken until at least one full day has elapsed (this to prevent snap judgment), and it must be taken by roll call. Moreover, the ministry cannot be refused a vote of confidence except by an absolute majority of the entire membership of the National Assembly.

This last provision is intended to prevent, in some measure at least, the absurdly frequent changes or reshufflings which hampered the orderly processes of government in the past. But it is by no means certain that this desirable end will be fully achieved by the requirement of an absolute majority of the entire membership of the Assembly. For it is obvious that if a ministry cannot regularly secure for its routine proposals a majority of those members who are present on the floor, it will have great difficulty in carrying on. There will be ways of making its continuance in office impossible without formally refusing a vote of confidence. A refusal to appropriate money is one of them, as the history of the British House of Commons has shown.

A contrast with conditions in England. In England a ministry which goes into office with a majority behind it is rarely turned out until the next election. In France the contrary has been true. There it is the legislature, not the electorate, that has usually forced a ministry out of office.⁹ On very few occasions has a French ministry been repudiated by the people at the polls. Defeat, for the most part, has come at the hands of the legislature. The same is likely to be true in the future, for political traditions are not changed overnight. Or, to put in another way: in England the ministry must keep its hand on the pulse of the country, in France upon that of the National Assembly. The task of the English ministry is easier, for while public opinion in a democracy may be uncertain, coy, and hard to please, it is much less so than is the membership of a loosely jointed bloc in the legislature.¹⁰

Another point of difference. There is another difference between the

⁹ For a discussion concerning the relations between ministry and parliament see below, pp. 434-439.

¹⁰ Several excerpts from discussions relating to the French ministerial system are printed in Norman L. Hill and Harold W. Stoke, *Background of European Governments* (New York, 1935), pp. 266-289.

ministers in France and in England. In both countries they perform executive and parliamentary functions, and supposedly give equal attention to each of these phases of their work. But as a matter of fact the executive duties of the English minister are on the whole deemed to be the more important, whereas in France his parliamentary functions appear to have the first call on his time and interest. A British minister who shows good administrative judgment and capacity is ordinarily safe in office so long as the cabinet stands; but in France a minister's security of tenure depends very largely upon his own individual adroitness as a parliamentarian and a politician. An indiscreet statement, a slight mishap in his department, a minor action which happens to arouse the wrath of some influential newspaper—and his post may be in danger.

THE FRENCH ADMINISTRATIVE SERVICE

The French bureaucracy. The routine work of French administration is carried on not only by ministers, secretaries of state, and undersecretaries, but by subordinate officials in the various ministries. Most of these hold their positions under a permanent tenure; they do not go out of office when a ministry resigns. Together they constitute a vast administrative machine, a great bureaucracy which goes right on with its work, unmindful of changes at the top. Ministers come and go, but neither their entry nor their exit has ever made much difference in the routine work of the departments. Paul Deschanel once growled that "France is not a democracy but a bureaucracy." This is not a true statement, for the ministers assume the responsibility and determine the general outlines of administrative policy. On the other hand, if any French minister, during his all-too-brief term of office, should attempt to recast the traditional way of doing things, he would find himself tackling a very difficult job. For the bureaucracy possesses the knowledge, the experience, and the solidarity of spirit which give them an inevitable advantage over the head of a department who is here today and may be gone tomorrow.

The internal organization of a minister's department. The French administrative system is well organized. Its organization is strictly hierarchical. Functions are devolved by the ministers upon directors of services, chiefs of bureaus, chiefs of sections, and so on, all forming a hierarchy of definite ranks and gradations. In each of the ministerial departments there is much the same division and subdivision of work.

The *directeurs* and the lower ranks. The routine administrative functions of each ministry are usually divided into services (*directions*, they are called), and each service has its director as well as its assistant director. These *directeurs* are officials who have been recruited by promotion from lower positions. Each *direction* is again divided into several bureaus, and each bureau

has its *chef de bureau* who is also a permanent official. These bureaus are the master cogs in the administrative machine. Without them the whole mechanism would cease to run. They are manned by a large corps of functionaries, *redacteurs* (clerks) and other subordinate officials who are minutely classified by ranks and grades. Most of them are appointed to the lower grades in accordance with departmental regulations and are then promoted on a basis of merit, experience, and political influence in varying degrees.

The bureaus. Within the bureaus there are further divisions and subdivisions; but one need not follow the classification any farther. It is enough to say that the whole organization takes the form of a pyramid, with the minister at the peak. All authority converges inward and upward. Before the Second World War this bureaucracy made up an army about 600,000 strong. This may seem to be a surprisingly large number in view of the fact that Great Britain had only about 500,000; but the French total included a wider range than the British, for example, all the public schoolteachers. France also had nearly 400,000 officials engaged in local government, which meant that the public payroll supported approximately 1,000,000 persons, not including the military and naval personnel or the employees of the government-owned railways. The various steps toward nationalization of railroads, banking, utilities, and insurance, taken since 1945, will increase these figures considerably.

The merit system of appointing officials. Before 1945 there was almost complete lack of uniformity of recruitment systems not only as between the various ministries but even between bureaus of the same ministry. All had a merit system of one kind or another, established by ministerial decree, and providing that prospective civil servants pass sufficiently high in a *concours* (competitive examination) based upon the public educational system. For the higher posts there were also a wide variety of competitive examinations so arranged as to tend to restrict competition to special groups within the service. In 1945 the National School of Administration was established which is now attended by most candidates for the higher civil service grades regardless of the ministry or service to which they will be assigned. The new school not only provides a thorough general political and social science curriculum (hitherto almost unobtainable in France except at the semiprivate *Ecole Libre des Sciences Politiques*) but arranges that students throughout their course of study work as interns in various administrative posts.¹¹

A law was passed in 1946 setting up general rules for recruitment and promotion in the civil service.¹² It applies to the regular civil service only,

¹¹ See B. Mirkine-Guetzévitch, "The national School of Administration in France," *Am. Pol. Sc. Rev.*, 43: 1026-1030 (October, 1949).

¹² Excerpts from this law are contained in L. H. Laing *et al*, *Source Book in European Governments* (New York, 1950), pp. 137-141.

excluding judicial and military personnel and the employees of commercial or industrial enterprises owned by the state. Provision is also made for differences between the various services and departments and exceptions to the general law are permitted with the approval of a new body created by this law: the superior council of the civil service. This council is presided over by the premier or his designate and has twenty-four members appointed by cabinet decree, half of whom are nominated by civil service unions. Its work consists mainly of making recommendations to the prime minister regarding the civil service.

The law sets forth the general duties and responsibilities of civil servants as well as the protections they enjoy. Unions are expressly permitted, and no mention of the political or other beliefs of a civil servant may appear in his *dossier*.

Each minister must create by order one or more bipartisan committees for his ministry or service to have charge of personnel matters as well as one or more similar technical committees to advise on efficiency and organization. Both kinds of committees must contain employee representatives elected by secret ballot according to a system of proportional representation.

The law attempts to generalize recruitment, although exceptions are permitted by law. Four general grades are set up: the two lower categories recruited by examination based on special skills (typing, and so on). The two higher categories are recruited either by competitive examination open to candidates with specified educational background and civil servants of a certain length of service or, in some cases, by competitive examination among experienced civil servants only.

Officials of all grades have a certain degree of protection against wrongful suspension or dismissal. Under the Third Republic they were usually entitled to a trial before a "commission of discipline" on which there were fellow officials of the same rank. There was also a right to appeal to the council of state in certain cases. After the liberation of France in 1945, however, there was a general purge of those officials, high and low, who were accused of collaboration with the Germans or with the Vichy government. Many thousands were ousted, with or without good cause. Their posts were filled, for the most part, by persons who had been active in resistance during the German occupation.

THE NATIONAL ECONOMIC COUNCIL

A national planning board. In order to assist the ministry in planning economic legislation and to help parliament in its consideration of such measures, a national economic council was established by decree in 1925. Eleven

years later it was enlarged and given a permanent statutory basis.¹³ As thus reconstituted, the general assembly of the council consisted of 173 members representing chambers of agriculture, chambers of commerce, employers' associations, labor unions, "intellectual workers," consumers organizations, real estate boards, and so on, together with a small group of "economic experts." The prime minister was named ex officio president of the council, but he could designate another minister or an undersecretary to serve in his stead. The statutory functions of the economic council were to make careful studies of national economic problems and advise the government thereon. It was stipulated that all measures of an economic character, when introduced into parliament, would be submitted at once to the council for discussion and that all ordinances of public administration, if they had economic implications, would be submitted similarly. In addition the cabinet was empowered to submit any economic question to it for study, and the same might be done by any parliamentary committee. Or the council could take up any economic problems and submit recommendations on its own initiative.

Its work. During the years between 1926 and 1940 the national economic council sponsored a number of comprehensive investigations in such fields as unemployment, housing, industrial organization, labor relations, overseas trade, and so on. These studies in several instances became the basis for subsequent legislation, especially in the case of measures passed by the French parliament. In the earlier years of its existence the council was regarded by the Chamber of Deputies with suspicion and jealousy, but this feeling gradually subsided, and although the work of the council was suspended during the war years the framers of the new constitution were overwhelmingly in favor of reviving it.

The constitution of 1946 accordingly provides that "An Economic Council, whose statutes will be determined by law, shall examine all bills and proposed laws within its purview in order to give its opinion thereon. The National Assembly shall send such bills to this council before considering them."¹⁴ Even before the new constitution went into force the National Assembly enacted a law setting forth the economic council's composition and functions.¹⁵ In general this law provides as follows:

Members of the council are chosen for three years as representatives of various categories—workers, employers, artisans, agricultural organizations, coöperatives, the overseas territories, intellectual workers, and family or home

¹³ An English translation of the law (March 21, 1936) is printed in W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 74-78.

¹⁴ Art. 25.

¹⁵ (2) *Loi du 27 octobre, 1946 relative à la composition et fonctionnement du Conseil économique*. For a summary see L. H. Laing, *op. cit.*, pp. 123-124. This law was amended by a law of August 20, 1947.

associations.¹⁶ The function of the council is to examine all proposed laws of an economic or social nature (except the budget) as well as all proposed international agreements of an economic or financial character which are submitted to the National Assembly. It *may* be called upon for an opinion concerning proposed decrees affecting the national economy, and *must* be consulted in the case of decrees which arise out of laws which have been submitted to it for its opinion. Likewise it may be asked to conduct investigations into economic, social, and financial problems.

When the economic council has reached a decision as to its opinion on any matter submitted to it (which must ordinarily be within twenty to thirty days except in emergencies), it transmits its opinion or report to the president of the National Assembly and to the head of the ministry.¹⁷ It also names a *rapporteur* to present the matter orally before the National Assembly, sitting in Committee of the Whole, or if need be, before the Assembly in formal session. The National Assembly is under no obligation to act in accordance with the economic council's opinion, but it must give full opportunity for a presentation of this opinion to members of the Assembly, each of whom receives a printed copy of the council's report before the debate begins.

The economic council, being a fairly large body (164 members), does most of its work through committees. These committees are of two kinds, general and special. The former deal with broader questions of economic and social policy, while the latter are "committees of specialized economic competence" which undertake studies of particular problems. The council likewise appoints a bureau or secretariat which receives official requests for opinions and reports, distributes and coordinates work among the several committees, and acts as a liaison with the National Assembly. An interesting provision is that ministers, undersecretaries of state, and committees designated by them must be heard before the council when they so request. Members of either chamber of parliament have a right to be present at the council's meetings when they so desire. The opinions and reports of the council are published in the *Journal officiel*.

¹⁶ Forty-five representatives designated by the most representative organizations of workers, employees, officials, technicians, engineers, and military staffs (*cadres*); twenty representatives of industrial enterprises, namely, six from the nationalized enterprises, and fourteen from private enterprises, large, medium, and small; ten additional from business enterprises, with definite representation assured to small business; ten representatives of the artisans (the foregoing forty members from business enterprises and the artisans are chosen partly by national organizations and partly by regional groups, including chambers of commerce); thirty-five representatives chosen from agricultural organizations; nine representatives of the coöperatives (two from production, two from consumption, and five from agriculture); fifteen representatives from overseas territories; ten qualified representatives of French culture, with emphasis upon intellectual workers in economics and science; eight representatives of family or home associations; and two representatives from the federations of war victims (this group is to be represented only during the period of reconstruction).

¹⁷ There have been complaints in the economic council that the time allowed for their reports is insufficient.

Between 1946 and May, 1948, the economic council considered and reported on thirty-eight measures, some of them of great importance. It is impossible to say just how influential with the Assembly it may become. At all events there is evidence that its reports can be effective in causing the Assembly to modify proposed laws.¹⁸

THE COUNCIL OF STATE

The Council of State. Under the Third Republic an important cog in the administrative mechanism was a body known as the Council of State (*Conseil d'Etat*). It dated back to the first consulate of Napoleon and in its earlier days possessed large powers. But in the course of time its legislative powers were taken away and its functions became administrative only. All ordinances of public administration, as has been said, were submitted to the Council of State before being issued, this being done to make sure that the ordinances did not reach beyond the scope of the laws. Sometimes the Council virtually redrafted the ordinance, leaving the President of the Republic little to do but sign it. On the other hand, the action of the Council in such matters was never mandatory; the ministers submitted all ordinances to it, but they were not bound to do what it advised. The chief jurisdiction of the *Conseil d'Etat*, apart from advising on ordinances of public administration, was concerned with administrative law, of which more will be said later on.¹⁹ It is here that it rendered its most notable service, protecting the citizen against arbitrary action on the part of the public authorities.

The constitution of the Fourth Republic contains no provisions with reference to the Council of State, although its makers contemplated that this body would continue under the new regime, for they expressly empowered the President of the Republic to appoint councillors of state.²⁰ But its composition and powers were left to be determined by law.

The present Council of State. The present Council of State is organized under an ordinance of the provisional government issued on July 31, 1945. This provided that the Council's ex officio president should be the minister of justice; the Council proper to consist of a vice president, five "section presidents," forty-six councillors in ordinary service, twelve councillors in extraordinary service, forty-nine *maitres de requêtes* (one to act as secretary general) and forty-four *auditeurs*. All are appointed by the President of the Republic in the council of ministers; in fact, on the advice of the minister of justice.

¹⁸ See an article by Léon Jouhaux (head of the *Force Ouvrière* and president of the economic council), "Le rôle du Conseil Economique," *Revue française du travail* (August, 1947); also an article in English in *International Labour Review* (Nov.-Dec., 1946), pp. 364-367.

¹⁹ See below, chap. xxx.

²⁰ Art. 30.

They are all permanent officials, career men, who start nowadays by studying at the new National School of Administration and enter the service by passing the stiff competitive examination for the lowest post, that of *auditeur*. Subsequently, as openings appear, they may hope to climb through the ranks to that of councillor of state and possibly to the exalted post of vice president.

What it does: 1. Regarding legislation. Its work nowadays is of a dual character as regards legislation. In the first place the Council of State according to law must examine every *projet de loi* (government bill) and normally does so *before* it is discussed in the council of ministers. Usually the appropriate administrators as well will have had a chance to look at a proposed law before it goes to the National Assembly for action. In the case of "urgent" measures there may not be time for this and in such circumstances a permanent committee of the Council of State will examine them.

The Council examines bills, not with a view to their political or philosophical merit, but strictly as regards their compatibility with existing laws and the correctness of their phraseology. According to M. Cassin this has been particularly useful in connection with the nationalization bills which provided for taking over certain factories, mines, and utilities.²¹ It is possible for the National Assembly to pass bills including little more than the general principles of the desired legislation, secure in the knowledge that the many administrative regulations needed to fill in the details will be prepared with the help and under the supervision of the expert, nonpartisan Council of State.

The five section presidents mentioned above are simply the chairmen of a small group of councillors who act as a special section to examine a particular kind of law or ordinance. Ministerial proposals are handled by one section. The other four each look over the ordinances issued by a group of administrative departments.

2. Regarding administrative regulations. The Council of State has the power to annul administrative regulations it finds to be illegal in any way. It has long had much prestige as the upholder of civil liberties against attempts at bureaucratic tyranny.²²

3. The Council of State as an administrative court. It also has important functions as the final court of appeal in administrative law cases, but these will be described later.²³

²¹ René Cassin (vice president of the Council of State), "Du Nouveau rôle du Conseil d'Etat dans la préparation des lois," *La République française* (October, 1946).

²² See the essay by René Mayer (minister of justice) "Conseil d'Etat, 1800-1950," *Cahiers français d'information*, No. 158 (15 June, 1950).

²³ See below, p. 496.

Léon Dupriez, *Les ministres dans les principaux pays d'Europe et d'Amérique* (2 vols., Paris, 1892-1894) is still a work of considerable value on the development and nature of ministerial responsibility, although it is badly out of date on some points. There are admirable chapters on the French ministerial system in Adhémar Esmein, *Droit constitutionnel française* (8th edition, 2 vols., Paris, 1927), Vol. II, pp. 208-273, Gaston Jèze, *Principes généraux du droit administratif* (3 vols., Paris, 1925-1930), the same author's *Cours de droit public* (Paris, 1929), and Maurice Hauriou, *Précis de droit constitutionnel* (2nd edition, Paris, 1929). The long chapter on "The Executive Power" in Robert Valeur's study of France (see above, p. 416) contains many interesting comments. Valuable data is given in J. Echeman, *Les ministères en France de 1914 à 1932* (Paris, 1932).

Mention should also be made of Duguit's volumes (above, p. 437). R. Bonnard's *Précis élémentaire de droit public* (Paris, 1936), H. Noël, *L'administration de la France* (Paris, 1911), Paul Duez, *La responsabilité de la puissance publique* (Paris, 1927), Joseph Barthélemy, *Le rôle du pouvoir exécutif dans les républiques modernes* (Paris, 1910), and Léon Blum, *La réforme gouvernementale* (Paris, 1936). See also R. S. Macridis, "The Cabinet Secretariat in France," in the *Journal of Politics* Vol. 13 (November, 1951). For a convenient treatment in English, see A. Diamant, "The French Council of State," in the *Journal of Politics*, Vol. 13 (November, 1951).

The best book in its own field is Walter R. Sharp, *The French Civil Service* (New York, 1931), which explains in full detail the organization of the French bureaucracy. A more general survey may be found in the chapter on "The French Civil Service" by Aubert Lefas which is included in Leonard D. White, editor, *The Civil Service in the Modern State* (Chicago, 1930), pp. 213-279, and in the volume by the same author (with others) entitled *Civil Service Abroad: Great Britain, Canada, France and Germany* (New York, 1935). See also H. Finer "The French Higher Civil Service," *Public Personnel Review*, Vol. 9 (1948).

On the system of national economic councils mention should be made of W. E. Rappard and others, *Source Book on European Governments* (New York, 1937), Part II, pp. 74-78; L. L. Lorwin, *Advisory Economic Councils* (Washington, 1931); and E. Linder, *Review of the Economic Councils in the Different Countries of the World* (Geneva, 1932).

A volume on *Le conseil d'état* by R. Brugère (Paris, 1910) explains the organization and powers of that body. See also articles mentioned in the footnotes to this chapter.

CHAPTER XXV

Parliament: The Council of the Republic

Such as are the leaders of the State, such is the State itself.
—Cicero

One House or two. For more than two centuries preceding the Great Revolution of 1789 there was no parliament in France. The king was the source of the laws. But the revolutionary assembly changed this situation by proclaiming that all legislative power resided in itself. And during the next three-quarters of a century France had a series of new constitutions, some of which provided for a single chamber and some for a legislature of two branches. There was no fixed tradition, but in general the monarchists preferred the bicameral system while the republicans felt that one chamber was enough. Hence the Third Republic began its career in 1871 with a single chamber—a national assembly it was called.

The Senate was the outcome of a conservative victory. This national assembly, however, was not merely a legislative body; its task was to serve also as a constitutional convention. But it found the work of making laws much easier than that of making a constitution. More particularly it was badly divided on the old question whether the new constitution should provide for one legislative chamber or for two. The republicans wanted a single chamber, while the antirepublicans insisted upon having both a Senate and a Chamber of Deputies. In the end the antirepublicans had their way. Their victory was embodied in the first of the three fundamental laws on which the Third Republic was based—a law which outlined the organization of the Senate.

The actuating motives of the conservatives. The establishment of an upper chamber was a necessary concession to the monarchists, imperialists, and other conservatives who formed an influential bloc in the national assembly and were by no means reconciled to the republican form of government. They feared that a single elective house might too easily be stampeded. They were influenced by the same motives which swayed the framers of the

American constitution in 1787. It is significant that conservatives in all ages and in all countries have been partial to second chambers. But the makers of the French constitutional laws, three-quarters of a century ago, were also influenced by the fact that the bicameral system had been adopted by every other country. The example of the United States was repeatedly alluded to, and it carried considerable weight because the American Senate at this time was proving itself to be an effective agency for restraining not only the lower house but the president as well. It had given considerable gratification to French public opinion by refusing to ratify a treaty for the annexation of Santo Domingo which President Grant submitted to it in 1870.

THE FRENCH SENATE, 1875-1940

The problem of organizing a Senate. But having agreed upon the principle of a two-house parliament there was still the problem of determining how the members of the upper chamber should be chosen, and this problem gave the national assembly a great deal of trouble. The American plan of having senators chosen by states could not be adopted because there were no constituent states in France. Some new method of organizing the second chamber had to be found. The extreme conservatives desired a Senate appointed for life—such as had been established a few years earlier in Canada. The radicals did not want a Senate at all, but insisted that if France must have such a body the senators ought to be directly elected by the people.

The final solution. In the end it was decided that the French Senate should be composed of seventy-five members appointed by the national assembly for life and 225 members chosen for nine-year terms by electoral colleges in the several departments or administrative divisions of the republic. The life membership provision was designed to supply the Senate with a strong conservative infusion, for these life members were to be named by the national assembly which the conservatives controlled. It was their intention to throw a solid block of seventy-five of their own friends into the Senate and thus to make sure that it would stay conservative for a while at least. But the plan did not work out as expected. By reason of dissension within the ranks of the majority, more than half the seventy-five life members were chosen from the more liberal groups. Later, in 1884, the life tenure was abolished by constitutional amendment. Those senators who had been appointed for life were allowed to serve out their days, but as they died or resigned, their places were filled by the elective process.

How senators were chosen. During the closing years of the Third Republic, therefore, the upper chamber of the French parliament consisted of about 300 senators, chosen for nine years to represent the eighty-nine departments

of France, the three departments of Algeria, and the various French colonies. Each department had from one to five senators; the colonies had four senators among them. Senators from one-third of the departments retired triennially. The choice of senators was made in each department by an electoral college which was convoked every third year for this purpose. These electoral colleges were made up of four elements: (1) the members of the Chamber of Deputies from the department, (2) the members of the general council of the department, (3) the members of the various *arrondissement* councils within the department, and (4) delegates chosen by the municipal councils of all the communes (cities, towns, and villages) within the department.¹ As there are more than 36,000 communes in France, the communal delegates far outnumbered all the other members of the electoral colleges and could usually control the election of senators. It is for this reason that the Senate of the Third Republic was often called "the great council of the communes."

Their conservatism. It was dominated by the rural voters, in other words, by the more conservative elements.² This was a frequent cause of complaint by the leaders of the more radical groups, which drew their chief strength from Paris and the industrial cities. And it is undoubtedly true that in the years between the First and Second World Wars the French Senate served as a brake upon legislative projects which the leftist elements were trying to carry into effect. Consequently it was not popular with large numbers of urban voters whose leaders kept insisting that it be reformed by reducing the nine-year term, abolishing the system of indirect election, and equalizing the quota of representation as between urban and rural communities.

The collapse of 1940. But nothing had been done in the way of reform when the collapse of 1940 occurred, and the two chambers of the French parliament, sitting together as a national assembly, voted themselves out of all authority. Both chambers, Senate and Chamber of Deputies, abdicated their powers unreservedly into the hands of Marshal Pétain and signed the death warrant of the Third Republic. In the agony of defeat they turned to the victor of Verdun (in the First World War) and accepted his promise of "peace with honor." Although the two chambers did not abolish themselves but adjourned *sine die*, they were never again called into session.

The Vichy interlude (1940-1944). In the area subject to the Vichy authorities, the government was conducted by Pétain, as head of the state, and by ministers who were responsible to him alone. The general nature of

¹ For an explanation of these general councils, *arrondissement* councils, and municipal councils see below, Chapter xxxi.

² Compare the similar result obtained in the United States (as regards rural overrepresentation) by giving the states equal representation in the Senate.

the administration under this virtual dictatorship has been outlined in a previous chapter.³ Then, in the early autumn of 1944, when the liberation of France by the Allied armies seemed to be at hand, a provisional government was set up in Paris with General Charles de Gaulle at its head, aided by a ministry and a consultative assembly. As this arrangement was to be temporary, the question arose as to how a permanent system of government should be constituted. Should the old constitutional laws of 1875 be taken as a starting point or should they be completely cast aside and a wholly new constitutional regime established?

Making a new constitution: The first attempt. The latter alternative was chosen; a constituent assembly or constitutional convention was elected; its draft of a new constitution was completed in April, 1946, and submitted to the people at a referendum in the following month. This proposed constitution made no place for a Senate. It gave all legislative powers to a single chamber, elected by proportional representation. As has been already explained, this proposed constitution was rejected at the polls, largely because of public opposition to the provision for a single-chamber parliament. While no considerable group desired a restoration of the old Senate as it had functioned prior to 1940, there was nevertheless a widespread feeling that some form of upper chamber was desirable and that its members should be chosen otherwise than by direct universal suffrage. Thus it should serve as a check, but a not-too-rigid one, upon the possible breaking of the speed limit by the National Assembly. Communist strength provided a compelling reason for many voters to reject the unicameral parliament. They feared that if this revolutionary party ever got control of such an assembly the Communists would proceed to put their program into effect without check or hindrance. In this they were ignoring the simple political fact that no second chamber or other legal safeguard would long restrain a Communist majority if it believed the time ripe for a coup d'état.

The final document. So the second proposed constitution which was submitted to the French people and adopted by them in October, 1946, made provision for an upper chamber to be known as the Council of the Republic, and stipulated that the members of this Council must be elected "by the communal and departmental bodies by universal, indirect suffrage." It also provides, however, that the National Assembly "may itself elect, by proportional representation, councillors whose number shall not exceed one-sixth of the total number of members of the Council of the Republic." A further constitutional provision requires that one-half the entire membership of the Council shall be chosen every two years and that this total membership shall not be less than

³ Above, Chapter xxii.

250 or more than 320. All other matters relating to the Council's organization were left to be determined by law.

Implementing the constitutional provision. A general law, determining the details of election and eligibility, was accordingly enacted on October 27, 1946, with the provision that the terms of this law should apply to the first election of the Council only, it being contemplated that changes might be deemed advisable as the result of experience in this first election. The council of ministers, moreover, was given authority to "determine changes in the application of the present law" by the issue of ministerial decrees.

How members of the upper chamber are chosen. As constituted by this legislation, together with subsequent amending laws and decrees,⁴ the Council of the Republic consists of 320 members, distributed as follows: 253 elected from Metropolitan France (that is, France itself), plus the departments of Guadeloupe, Guiana, Martinique, and Réunion, by electoral colleges as will presently be explained; 14 elected by the Algerian departments; 44 chosen by electoral colleges in overseas territories; 1 by the French citizens in Indo-China; 2 for the French in Tunisia and 3 for Morocco; plus 3 for French citizens living abroad.

In Metropolitan France and the overseas departments mentioned above, an electoral college is established in each department, as was the case in senatorial elections prior to 1940. This college is composed of: (1) those deputies who represent the department in the National Assembly, (2) members of the general council of the department, and (3) the municipal councillors of the communes of more than 9,000 population and delegates from the municipal council of the smaller communes, elected by the municipal council, plus additional delegates from the communes of over 45,000 inhabitants. This system, which clearly gives a preponderance of power to the municipal councils in the elections, is very similar to that used to elect senators in the Third Republic.⁵

Number of seats; nominations. In Metropolitan France and the West Indies departments, seats are assigned by departments according to population, one for the first 154,000 and additional seats for each additional 250,000 inhabitants, or fraction thereof. The councillors are nominated by parties and groups, each party submitting a list containing as many names as there are seats to be filled.

Election. For departments entitled to less than four councillors of the

⁴ For the law of September 23, 1948, see H. L. Laing, *et al.*, *Source Book in European Governments* (New York, 1950), pp. 119-122.

⁵ The details are too complicated for complete tabulation here. A tiny commune of 100 souls would have a single delegate. One with 500,000 inhabitants would have 128. Clearly the little places are relatively overrepresented. Those having between 500 and 10,000 inhabitants are represented in fairly exact proportion, while the larger communes are underrepresented. Accordingly, the Council predominantly represents not only the communes but the smaller ones in particular.

republic, election is by majority vote on two ballots.⁶ An absolute majority composed of at least one-quarter of the qualified voters is needed for election on the first ballot. On the second ballot a "relative majority" (plurality) is sufficient, and in case of tie, the oldest candidate is declared elected. Nominations may be individual or by lists. In departments with four or more seats, the party list system of proportional representation is used. No split or preferential votes are allowed, which is of great advantage to the well-established parties. The system used is that which the French call "the highest average." This is explained in the next chapter.⁷

No candidate may appear on more than one list or run in more than a single district.

The councillors are elected for a six-year term with half retiring at three-year intervals. Both groups were elected in 1949, but half retired or were re-elected in May, 1952, and the other half will be in May, 1955. Candidates must be at least thirty-five years of age and otherwise meet the requirements for membership in the National Assembly.

Councillors elected outside of France proper. For the Algerian departments the "double college" system of election is used. Both colleges consist of the deputies of the National Assembly, members of the Algerian Assembly, general councillors and delegates from the municipal councils and others. The first college is composed of French and Europeanized natives (chosen according to an elaborate formula) and the second college of non-Europeanized natives. Both use the two-vote system (*scrutin majoritaire a deux tours*), and the first college has much greater voting power in proportion to the population represented.

It may seem odd that there is special representation in the Council of the Republic for French citizens resident in other areas such as Tunisia, Morocco, Indo-China, or in foreign countries. The reason is that the Council is predominantly a *community* body as contrasted with the *individual* aspect of the National Assembly. All French citizens, as such, are represented in the Assembly but their communities would be unrepresented in the Council unless special representation were provided. Accordingly, in Tunisia, the French citizens who are members of the Grand Council or the municipal councils form the electoral college for the Council of the Republic. Their votes are mailed to Paris and counted there so as not to infringe upon Tunisian sovereignty. The three senators⁸ from Morocco and the one from Indo-China are

⁶ The law concerning these elections is that of September 23, 1948.

⁷ See below, p. 410.

⁸ The Council of the Republic has restored to its members the right to be known as "senators." Similarly the National Assembly has reserved to its members the exclusive right to the title of "deputies."

nominated by the National Assembly upon the advice of local groups and persons. Similarly the National Assembly nominates the three senators for French citizens resident abroad, again taking the advice of "certain groups." Altogether at present only seven senators are nominated by the National Assembly.⁹

The Council's meeting place. Both the Council of the Republic and the National Assembly meet at the same time, and their sessions come to an end simultaneously. In Great Britain and the United States the two legislative chambers meet under the same roof; but this is not the practice in France. The Council holds its sessions in the Luxembourg Palace, while the Assembly convenes at the Palais Bourbon. Every visitor to Paris desires to see the Luxembourg with its magnificent rooms and corridors, richly decorated with tapestries and with carvings in wood. The main chamber is in the form of an amphitheatre, with eight rows of arm-chairs, upholstered in red velvet, rising tier on tier. Directly in front of them is the tribune from which the senators (or the ministers when they are present) make their speeches. Behind the tribune sits the presiding officer and near him the chief of the Council's secretariat, while grouped around them are splendid marble statues of the great chancellors who laid down the law in olden days—Turgot, D'Aguesseau, Colbert, and the rest. On the lawmakers of a very modern republic these faces of stone look down.

THE COUNCIL'S POWERS

General powers of the upper chamber: Under the old constitution. It was the intention of those who framed the French constitutional laws of 1875 that the Senate should be at least co-equal with the Chamber of Deputies in authority and influence. And so far as the express provisions of these constitutional documents went, there was no reason why it should not have been. The ministers were made equally responsible to both chambers but, as it turned out in practice, their chief responsibility was not to the Senate but to the Chamber of Deputies. The Senate was also allotted an equal share in the making of the laws, with the single exception of money bills which had to originate in the lower house. But here again the Chamber of Deputies usually asserted itself as the dominating legislative body when controversies arose. The constitution of 1875 also gave the Senate two special powers which were deemed to be of great importance, namely, the right to serve as a high court of impeachment, and the power to join with the President of the Republic in ordering a dissolution of parliament. But neither of these special privileges

⁹ According to the law of September 23, 1948. This despite the constitutional power to elect as many as one-sixth of the entire Council of the Republic.

turned out to be of much consequence during the lifetime of the Third Republic. On only three or four occasions was the Senate called upon to serve as a court of impeachment and only once did it consent to a dissolution. The public reaction to this latter step proved to be so adverse that a dissolution was never again attempted.

Character of the senatorial candidates. It is yet too early for any prediction to be made concerning the caliber of the men who will constitute the Council of the Republic. The old Senate was, for the most part, composed of legislators who were well along in years. The average age of its members during its last decade of existence was well over sixty. Most of them were lawyers, journalists, rural landowners, or professional politicians, who had already served in the Chamber of Deputies. They esteemed it a promotion to go to the Senate, for that body enjoyed great prestige even though it was the less important of the two chambers in point of lawmaking power. Some deputies were also attracted by the longer term (nine years) which election to the Senate assured. At any rate there was frequent complaint that the French Senate, under the Third Republic, was an assemblage of elderly politicians in whom the increasing weight of years had produced a stubborn conservatism. One may doubt, however, that this was the principal reason for the Senate's disinclination to approve some of the radical measures which the Chamber of Deputies sent up to it. A more plausible explanation may be found in the fact that the senators were chosen by electoral colleges in most of which the delegates from conservative rural areas outnumbered the others. Much the same method of election is being used to elect members of the new upper chamber, the Council of the Republic.

Why a second chamber? We have already noted that the first proposed constitution with its unicameral parliament was rejected by the voters of France. It was plain that the second constituent assembly would have to compromise with this attitude. This they did, but by providing a second chamber with the minimum of authority.

Its loss of powers as compared with the Senate. The Council of the Republic does not act as a court of impeachment as did the Senate. This power has been given to a new body called the high court of justice. The Senate's concurrence was necessary for all laws, and sometimes it would oppose important measures so strenuously as to cause the resignation of the government. The new Council is, in law at least, little more than an advisory body as regards legislation. It can hold up a proposed bill no longer than two months after which it becomes law without the Council's approval. This suspensory veto period can be shortened, in connection with matters declared "urgent" by the Assembly and as regards the budget, to the same length of time as

was needed for consideration and passage in the Assembly.¹⁰ The Council still has the power to propose amendments which must be considered by the Assembly. The primary chamber may accept or reject these by simple majority in most cases. There is no conference committee procedure required. Bills originating in the Council are sent, without any debate there, to the Assembly, where they may be considered or simply ignored if the ministers prefer. There is one provision, however, that enables the Council to exert considerable braking power upon Assembly action under certain conditions. If the Council amends a bill *by absolute majority of its membership and by scrutin public*, a similar action by the Assembly is required to override the amendment. It is obvious that a ministry might be able to put through a controversial measure by a slim majority of less than the full membership and be unable to muster the extra votes needed to meet this challenge.

Powers remaining to the Council. Almost the only power of the old Senate which remains unmodified in the hands of the new Council is that of joining with the National Assembly in the election of the President of the Republic. It has two other powers of unproved importance: its concurrence is necessary to a declaration of war and it can, by absolute majority, request the examination of a proposed bill by a constitutional commission if it believes the bill to be unconstitutional.¹¹

Many French commentators have held that the Council is doomed to be a mere shadow of the old Senate and to play no significant part at all in the government of France. They believe that it will remain a mere advisory body rather than an integral part of the legislature. This idea was expressed succinctly by M. Coste-Floret (the reporter-general of the constitution) when he referred to the new parliament as an example of "modified unicameralism."¹²

Despite these comments it is impossible entirely to write off the Council as a force in French politics. Its advice may prove to be influential. The six-year term and the renewal of half the membership every three years mean that it can sometimes claim to be an expression of more recent public opinion than the five-year Assembly. Its ability to compel an absolute majority to override its veto could be seriously embarrassing to a prime minister. Clearly no government can afford to ignore it completely, and M. André Marie, when entering upon a term as premier, was probably expressing more than mere

¹⁰ In August, 1947, the National Assembly passed and sent to the Council a measure appropriating ten billions of francs for the armed forces. The bill contained only sixteen lines of text and was considered insultingly uninformative by the Council which approved it, but by a vote of eight to nothing, 307 members abstaining as protest against this slight to their chamber.

¹¹ See below, p. 476, for the details of this procedure.

¹² A similar comment was made by an authority on French constitutional law who described the Council as a "pale copy of the old Senate, a decorative organ without effective powers." Maurice Duverger, *Cours de droit constitutionnel* (4th edition, Paris, 1947), p. 253.

politeness when he declared from the tribune of the Council that he could not remain in power without the coöperation of that chamber.¹³

Rules and procedures of the Council. It is unnecessary to detail the rules of procedure used in the Council of the Republic, as they are substantially similar to those of the National Assembly except for such differences as are required by the constitutional position of the two chambers. Like the assembly it elects its *bureau* of president, vice presidents, and so forth. The party groups nominate their members to committee positions in proportion to their strength, as in the Assembly. As noted above, any bill introduced by a senator is neither debated nor sent to a committee but transmitted at once to the National Assembly.¹⁴ This again emphasizes the idea of the Council as a chamber of revision rather than the half of a bicameral legislature. Measures originating in the National Assembly, including the budget, are sent to the Council after their first reading and there considered first in committee and subsequently by the entire Council.

A reflection of the French temperament. The average Frenchman is neither a congenital reactionary nor a rampant radical. He wears his heart on the Left and his wallet on the Right. Accordingly he often finds that his sympathies are with the radicals while his interests are with the conservatives. That being the case, the Council of the Republic and the National Assembly, although openly in disagreement, may both represent him faithfully. One may mirror his political philosophy, the other his views on the economic realities. The Assembly is his Don Quixote, the Council his Sancho Panza. It has often been remarked, moreover, that Frenchmen have good memories—in politics. They have not altogether forgotten that the Senate saved France from the catastrophe of a Boulangist dictatorship fifty years ago. They know full well the weakness of the lower chamber, which is to let itself be swayed by eloquence into hasty and ill-considered action. And today they fear especially an Assembly dominated for the moment either by the Communist party or by the extreme Right.

An excellent survey of the Senate's organization and work may be found in A Esmein, *Droit constitutionnel française* (8th edition, 2 vol., Paris, 1927), Vol. II, pp. 333-478, and in G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpellier, 1917). Attention may also be called to Joseph Barthélemy, *Le gouvernement de la France* (2nd edition, Paris, 1924), chap. v. There is an English translation by J. B. Morris (New York, 1924). The same author's volume on *Les résistances du Sénat* (Paris, 1913) is interesting. See

¹³ Debates, Council of the Republic, 1948, p. 2402.

¹⁴ Required by Art. 14 of the constitution. But no bill so transmitted will be considered by the National Assembly if it proposes a reduction in the public revenues or the creation of new expenditures.

also E. M. Sait, *Government and Politics of France* (New York, 1920), chap. v, and the chapter on "The Power of the Senate" in W. L. Middleton, *The French Political System* (New York, 1933).

As yet there are few commentaries in English upon the Council of the Republic. Attention should be called to a recent study of the French National Legislature by D. W. S. Lidderdale, *The Parliament of France* (New York, 1952). Georges Vedel, *Manuel élémentaire de droit constitutionnel* (Paris, 1949) contains the constitutional law involved together with shrewd comments upon its actual workings. Also of interest are the following articles: E. Weill-Raynal, "L'élection du Conseil de la République," *Revue socialiste*, 1948, 467; G. Pernot, "La Chambre de réflexion, a-t-elle le droit de réfléchir?" *Revue politique des idées et des institutions*, 1948, 327; P. Arrighi, "Le règlement du Conseil de la République," *Revue de droit public*, 1947, 399ff.; N. Denis, "Une Assemblée qui monte," *Une semaine dans le monde*, (January 10, 1948); and A. Cobban, "The Second Chamber in France" in the *Political Quarterly*, Vol. 19 (1948).

CHAPTER XXVI

Parliament: The National Assembly

Every large body of men, not under strict military discipline, has lurking in it the traits of a mob, and is liable to occasional outbreaks when the spirit of disorder becomes epidemic; but the French Chamber of Deputies is especially tumultuous.—A. Lawrence Lowell

Why the constitutional laws did not deal with the Chamber. In the constitutional laws of 1875 there is a great deal about the composition and powers of the Senate, but scarcely a word concerning the Chamber of Deputies. Save for the provision that its members shall be elected by "universal suffrage" the organization of the Chamber was left to be determined by ordinary legislation.¹ There were two reasons for this action. In the first place no differences of opinion existed in the national assembly as to how the Chamber should be organized. Everybody assumed that the lower branch of the legislature would be made up of members directly elected by the whole people. That being the case it did not seem to matter very much whether the election took place under one form of procedure or another. In the second place, it was felt that much might be gained by leaving the organization of the Chamber flexible. Before it dissolved, however, the national assembly adopted an organic law in which the method of electing deputies was prescribed, but the provisions of this electoral law have been amended several times since 1875.

The suffrage in the Third Republic. In 1939, the Chamber of Deputies consisted of 618 members.² It was, therefore, one of the largest elective chambers in the world. The deputy represented a much smaller electorate than his counterpart in the United States—about 70,000 on the average, compared with the American Representative's 300,000. The suffrage was limited to males of twenty-one or over, but was otherwise extremely liberal with no educational or taxpaying requirements. Votes-for-women legislation received the approval

¹ The term "universal suffrage" was interpreted in France to mean manhood suffrage.

² Of these, ten were allotted to certain French colonies, nine to Algeria, and the rest to Continental France.

of the Chamber of Deputies several times only to be blocked in the Senate. As in Belgium, it was the Socialist and other parties of the Left, traditionally anticlerical, who disapproved of female suffrage because they feared the influence of the Catholic clergy upon women voters who are supposedly more pious than men.

The suffrage in the Fourth Republic. Under the new constitution the suffrage is given to all French nationals and *ressortissants*, which may be translated roughly as "subjects." The latter include the inhabitants of associated territories (Togo, the Cameroons) who are not, strictly speaking, French nationals because their countries are not a part of France nor yet internationally recognized states. To understand how these people vote it is necessary to examine the electoral laws referred to in the constitution. The general rule is that in the case of areas containing tribal natives or others of little political experience or education two electoral colleges are provided. The first college contains European French citizens and Europeanized natives and the second college includes the rest of the inhabitants. The first college is given proportionately much larger representation.

The voting lists. The lists of voters are permanent. At all times in every commune there is a valid list of electors which is used for all elections, municipal and national. This list is compiled from the vital statistics on file in the *mairie* (town hall). The voter does not need to register personally, and the lists so compiled are generally accurate because of the completeness of the *état civil* records in France. Normally the voter is inscribed on the list of the commune in which he lives. He may qualify as a taxpayer in other places but must decide on which list to inscribe his name and may cast but one ballot: French citizens living abroad and registered at a French consulate may be inscribed in the commune from which they were drafted into military service or, in the case of women, the commune of birth or last residence. Provision is made also for soldiers and mariners.

The revision of the lists. The electoral lists are revised annually under the supervision of a committee consisting of the mayor, a representative municipal councillor, and a delegate of the prefect or subprefect. This committee oversees the addition of names of new voters, the deletion of those who have died, moved away, or lost their civil rights. The list is posted at the town hall not later than January 15. Appeals against it may be made by the prefect or subprefect or by any interested citizen to the municipal revision committee which is the original committee plus two more delegates from the municipal council. Thence appeal lies, on a question of law only, to the justice of the peace and finally to the *Cour de Cassation*.

Female suffrage. Votes for women finally arrived under the new con-

stitution. As in other countries, the result has been less striking than had been forecast by both advocates and opponents of this reform. Women tend to split their allegiance among the various parties just as do their husbands and sons and in much the same proportions.³

ELECTION METHODS

France has tried, since 1875, various methods of electing deputies. During the first ten years the elections were based upon single-member districts, as in England and the United States. But this plan, to which the French gave the name *scrutin d'arrondissement*, was deemed unsatisfactory because it seemed to concentrate the attention of each deputy upon the interests of his own district rather than upon those of France as a whole. The districts were small, and it is an axiom of government that small districts elect small men. As Gambetta once said, it made the Chamber of Deputies "a broken mirror in which France could not recognize her own image."

So a plan of election by general ticket, or *scrutin de liste*, was adopted in 1885. Under this system the voters of each department (a department is the largest administrative district in France) chose four, or six, or ten deputies according to its population. But the plan of election-at-large also failed to satisfy. It failed to provide minority representation, it played into the hands of demagogues as the Boulangist upheaval showed, and did not produce any noticeable improvement in the quality of the men elected; so the old method of election by single-member districts was restored. But not to much purpose, for the dissatisfaction with it soon flared up again. After the close of the World War there was an agitation for the use of proportional representation and provision for it was made in 1919. Two general elections were conducted under this arrangement, but on the whole it satisfied the people even less than the preceding plans had done.⁴ So in 1927, the method of *scrutin d'arrondissement* or single-member districts was restored and France went back to the plan of election from which England and America have never departed. No further change was made during the remaining years of the Third Republic.

The 1946 law: the "highest average" system. The new constitution provided for a restoration of the list system of proportional representation, and the law of October 5, 1946, carried out the constitutional requirement.⁵ This pro-

³ The most striking result of female representation in the National Assembly was the passage of a law abolishing legalized houses of prostitution. Women representatives of all parties united on this subject.

⁴ An explanation and criticism of the French system of proportional representation (as it was used from 1919 to 1927) may be found in H. L. McBain and Lindsay Rogers, *New Constitutions of Europe* (New York, 1922), pp. 107-108.

⁵ Parts of this law are found in translation in H. L. Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 114-119.

vides for a larger electoral district, the department as a rule. Exception is made in the case of the seven most populous departments which are subdivided. The number of seats to be filled from each district is based upon population, but no department has fewer than two and many have four or more deputies to elect. Every party or group contending for seats must present a complete list. No candidate may appear on more than one list nor run in more than one district. The voter must cast his ballot for one list only. *Panachage*, the French term for split voting, was forbidden. The only chance the voter had to alter the conditions set by the parties was to write out his own ballot and change the order of the names as they occurred in the printed party ballot. He might not add names that did not appear upon it. In any case this privilege was of little practical importance because a majority of those voting the party ticket would have had to make the *same change* for it to have any effect upon the results.

The "highest average" system is a simplified version of that devised by the Belgian Professor d'Hont, and works as follows:⁶

The list with the largest number of votes gets the first seat. Then its total is divided by *two* (one, plus the number of seats assigned) and the result compared with the other lists. The highest number now takes the second seat. Again the lists are divided by the number of seats already assigned plus one and the results are compared. This is continued until all are filled. An example may clarify the procedure. Suppose a department with seven deputies to elect and a vote distributed as follows:

SFIO	72,000
MRP	55,000
RGR	50,000
PC	20,000
Ind.	3,000

The Socialist party (SFIO) gets seat number one which goes to the candidate heading its list. Its vote is then divided by one plus the number of seats assigned (one) which equals two. Divided by two, 72,000 yields 36,000. All other lists are divided by one plus the number of seats assigned (zero) which means that their size is unchanged. The figures to compare are now:

SFIO	36,000
MRP	55,000
RGR	50,000
PC	20,000
Ind.	3,000

⁶The law simply refers to the system as "*la plus forte moyenne*" or "highest average." It is described clearly in Marcel Prélôt, *Précis de droit constitutionnel*, Dalloz (Paris, 1949), pp. 375, 376.

The next seat therefore goes to the MRP top man, and the next comparison is:

SFIO	36,000
MRP	27,500
RGR	50,000
PC	20,000
Ind.	3,000

Accordingly, the Rally of the Republican Left (RGR) get the next seat. When their votes are divided, the largest figure will again be that of the Socialists (36,000) and so their number two candidate will be elected. This is continued until all seats are filled which, in this case, would mean three seats to the Socialists, and two each to the MRP and the RGR. The Communists and Independents would get none.

The law of 1946 was never universally acceptable. The extremist parties liked it because it harmonized with their disciplined organization and central control, and because it enabled them to pick up seats in many districts where the old system would have left them unrepresented. The Socialists and especially the Radicals did not care for it. Their electoral strength often lay in the personal connections built up over the years by deputies in their own districts. The ordinary voter was not always satisfied with the lists as arranged for him and, as noted already, could do nothing effective to alter them.

The electoral law of May 7, 1951. After prolonged debate a new electoral law was adopted by the National Assembly on May 7, 1951, by absolute majority. This law was frankly designed to reduce the number of deputies elected by the extremist parties and, as the ensuing election showed, it accomplished its purpose. Since December, 1950, the debate had raged between the advocates of pure proportional representation and those who wanted a return to the old single-member district system. The latter was favored by the Council of the Republic, which passed its own bill by absolute majority and so compelled the government to find a similar majority for its measure in the National Assembly.

The new law is a complicated one.⁷ The voters still cast their ballots for a party list as under the former law, but now the parties that agree among themselves to do so may ally their lists for election purposes. To do this they must file a declaration of alliance at the departmental prefecture at least twenty-three days before election day. Only national parties may do this, that is, parties that have candidates in at least thirty departments. This means that the moderate parties may ally their lists for an election and, of course, refuse any offer of alliance by the Communist or De Gaullist parties.

⁷ For a detailed explanation see *Ambassade de France, Service de presse et d'information*, Doc. No. 42 (May 9, 1951).

The law provides further that a list receiving half the votes cast wins *all* the seats. If it is an allied list the seats are then distributed between the allied parties by the "highest average" system of proportional representation. If no list is so fortunate as to get half the vote, the same system of proportional representation is used on all the lists, treating an allied list as a single list for the initial assignment and then distributing the won seats among the allied parties.⁸

Split tickets as well as preferential voting are allowed under the new law, the former by crossing out a name and writing in a name from another list, the latter by placing a cross opposite the name of the preferred candidate. However, as before, at least half the voters who vote the list must make the same change or it is disregarded and so could be effective only under very rare circumstances.

Its results. The electoral law of 1951 has had the following results: (1) It gives enormous advantage to the parties able to ally their lists for the election. By securing one-half of the total vote, the allied parties can shut out the others completely. This is the most significant change from the 1946 law which reproduced with rough fidelity the actual voting strength of all major parties. Of course, when the combined list fails to get half the total vote the other parties are able to gain seats but are still under a serious handicap compared with the allies.

(2) The new party and the independent candidate are also under a great disadvantage. This was true as well under the 1946 law, but the disadvantage suffered by the new party is even greater now because if it has candidates in a few departments only, it is denied a place on an allied list.

(3) As under the previous law, the local party organization has great power over nominations and, because of the list system, this really means power to secure election of a candidate or deny it to him. The department federation of party "militants" determines the order of candidates on the list and this order means that a candidate may be virtually certain of election,

⁸ An example may make this clear. In the election of June, 1951, the vote in the Ardennes, with four seats at stake, was as follows:

SFIO	28,550	
MRP	19,337	Allied list with
Radicals	7,389	total vote of 67,663
Conservatives	12,387	
Communists	32,641	
RPF	21,641	

The total vote cast was 122,045. The majority needed to win all four seats was, therefore, 61,023. The allied list exceeded this number and therefore won all four which were then distributed by the highest average system. This gave the Socialists two seats, the MRP, one, and the Conservatives, one. It will be noted that the Conservatives got a seat and the Communists did not, even though the latter had received more than two and a half times as many votes. Similarly, the MRP won a seat while the RPF with over 2,000 more votes failed to get one.

have a good chance, or have no hope at all, depending upon the place assigned to him.⁹

(4) Because, as a rule, a candidate must retain a high place on the party list if he hopes to be re-elected, he is disposed to accept party discipline more readily than his predecessors of the prewar Chamber. Well-organized national parties, therefore, have rather better control over their parliamentary delegations than they used to have.

A criticism and defense of this law. Not only Communists and Gaullists but many others as well consider this electoral law to be grossly unfair in its operation. It is, they say, a tricky kind of "disproportionate representation." It is defended, on the other hand, not only on the ground that it reduces the parliamentary representation of parties whose loyalty to republican democracy is questionable, but because it enables the parties of the Center to retain their independence and separate identities and at the same time present a united front at elections. The voter is thus able to express his preference among these parties without having to fear that his vote for the Radicals instead of the Socialists, for instance, might help the extremist parties to gain power. The fact remains that it has distorted the basic orientation of the electorate. In 1951 the Right got well over half the seats in the Assembly by obtaining less than 47 per cent of the popular vote.

Distribution of seats. Metropolitan France plus the West Indies departments are assigned 544 seats in the Assembly, Algeria gets 30, and overseas territories have 35.

Campaigns and voting. According to law, elections to the Assembly take place on the fifth Sunday after the decree announcing them has been published. Campaigns, however, must not start until twenty days before election day.

Sunday voting. In keeping Sunday as election day the French are retaining an old custom of the Third Republic which has obvious advantages. Schools, the most convenient polling places, are available on Sundays. The work-week is not interfered with as here.¹⁰ It may be assumed, nevertheless, that there would be strong sentiment in many parts of the United States against Sunday voting and sentiment is often stronger than reason.

The campaign: legal aspects. In order to prevent discrimination in favor of wealthy candidates and parties, the law provides that the approved quality of posters, ballots, and circulars be prepared at state expense and that the

⁹ This statement applies generally to all except the Communist party whose national headquarters controls the local lists. To begin with, the central organs of the new postwar parties were able to exert a good deal of influence upon their local branches in the matter of nominations. This central influence is less important now that the deputies have become known in their departments and have had time to organize a local following.

¹⁰ It is estimated that production slackens from 10 to 20 per cent on election day in the United States.

ballots and circulars be mailed free of charge to the electors. Candidates are further reimbursed for money spent on bill-posting, according to the size of the district, as well as for an approved amount of gasoline consumed in electioneering. A bond must be posted on behalf of each list amounting to 20,000 francs and this is forfeited if the list fails to get at least 3 per cent of the votes cast. In this case also there is no reimbursement for bill-posting and gasoline. Obviously this is intended to discourage frivolous candidatures, although the amount of the bond is far less of a deterrent than is the English election deposit.

The campaign: its politics. Campaigning in France, much as in other democracies, consists of a good deal of speech-making, of a violent battle waged in the partisan press, and of a plethora of small, colored posters displayed upon the *kiosques* that line the boulevards and streets. It is sometimes said that French candidates and voters alike are more susceptible to the philosophical argument than are the Americans and British. Certainly, if so, this does not prevent campaign oratory from reaching great emotional heights nor the newspapers from making scurrilous attacks upon political opponents.

Voting. Voting for the National Assembly takes place in every commune, although the prefect may assign as many polling places as needed. Each voting place is in charge of an elections *bureau*: the mayor, assistant mayors, and municipal councillors or voters nominated by the mayor. Each polling place has four assessors: municipal councillors taken in accordance with a table of precedence or, if these are not available, the two oldest and the two youngest voters present at the opening of the polls.

The *bureau* has the job of policing the poll and overseeing the voting. Everything is public and the candidates and voters have every right to enter the polling place and remain there as long as they wish.

Counting the votes. The votes are counted as soon as the poll is closed (the polls are open from 8 A.M. to 6 P.M.) by the election officials plus scrutineers nominated by the candidates or party lists or, in default, by the president of the electoral *bureau*. The results are announced at once.

If there is a question about the validity of a ballot the matter is decided by the "census committee": its president being the president of the civil tribunal assisted by two magistrates, a general councillor of the department, and a division chief of the prefecture.

Disputed elections. If disputes arise concerning the results of an election, they are decided by the National Assembly under the constitutional provision which empowers it to determine the qualifications of its own members. Controversies are referred to committees, but the recommendations of these committees are not always accepted by the whole Chamber. The latter's action

is largely influenced by partisan considerations. Protests may be filed on grounds of intimidation, bribery, or corruption, and if the Assembly upholds these protests it will annul the election. Then a new election is ordered. But the Assembly cannot impose any other penalty upon candidates who have been guilty of electoral corruption. They may, however, be prosecuted in the courts. The Assembly, in fact, is supreme as regards the seating or refusal of elected members. During the Third Republic, the Chamber sometimes seated legally ineligible deputies. The first constituent assembly refused to seat a properly elected member (M. Laurens) for political reasons. As in the United States, these matters are handled in a political assembly and in a political way rather than by the courts as in Great Britain.

Election expenditures. There is no law which limits the amount that a candidate may legitimately spend in getting himself elected. So long as he does not spend it corruptly he may pay out as much as he likes and is not required to publish a statement of his expenditures. In England and in the United States there are stringent laws relating to maximum political expenditures, but in France there are no limitations of this sort. Nor does there seem to be need for any, since public opinion usually provides an adequate check. An outpouring of money on behalf of any candidate, or group of candidates, is likely to defeat its purpose in France, for the people are not accustomed to it and would resent the innovation. The laws, moreover, do their best to assure each candidate an equal chance—for example, by providing free billboards, giving every candidate his due share of space on them, and forbidding *affiches électorales* or campaign posters to be put up anywhere else.

Absence of electoral frauds. Candidates and party groups spend a good deal of money in France as elsewhere. While it is difficult to make an exact comparison there is reason to believe that an election campaign costs about as much in France as in Great Britain. Campaigns and elections, on the whole, are conducted fairly, and save in very exceptional instances the ballots are counted honestly. Lord Bryce, however, tells a story of one polling place where as the hour for closing approached, it was found that only a small vote had been cast. The mayor of the commune, on being informed of this, said in a cryptic whisper to the polling officials: "It is your duty to complete the work of universal suffrage"—and presumably they obeyed orders. Sometimes, in a hotly contested election, the rival partisans have invaded the polling place and engaged in a fist fight during which the ballot box was smashed open and the ballots scattered to the four winds of heaven.

Putting pressure on the electorate. At any rate the neighboring *estaminets* do a good business on election day, and politicians sometimes foot the bills. Places which sell intoxicating beverages are not closed in France

on election day, as they are in America. Employers are alleged to be over-zealous at times in persuading their workers, and in rural districts it is sometimes said that the landlords bring pressure to bear on their tenants. A generation ago it was contended by the radicals that the priests in many parts of France were exercising too much political influence over their parishioners, but today this complaint is seldom heard. Pressure used to come chiefly from the prefect, the subprefect, and other public functionaries. Some of these officials were quite obtrusive in their efforts to secure the election of deputies who would support the ministry. A ministry which was in power when the election came had an advantage over its opponents by reason of the influence which it could persuade these officials to exert. Even in this respect, however, conditions are better than they used to be. Of late there have been few complaints in the press about governmental interference with elections, and it is the consensus of French observers that the prefect is considerably less active politically today than was the case during the Third Republic.¹¹

POWERS, MEMBERSHIP, AND ORGANIZATION

The sessions of the National Assembly. As was the case with the prewar Chamber of Deputies, the National Assembly meets on a date fixed in the constitution itself: the second Tuesday in January. There is a summer recess, but the Assembly must be in session at least eight months in the year and normally is in session about nine months. Daily sittings begin after lunch (the French lunch "hour" is twelve to two) and last until dinner time, six or seven o'clock. Morning sessions are held when pressure of business requires, but evening sessions are avoided as a rule. The Assembly meets in the Palais Bourbon, used by its predecessor, the Chamber, ever since 1879. This is a severely classic building, its plinth ornamented with bronze statues which flank an impressive flight of steps. It stands on the left bank of the Seine opposite the bridge leading to the center of the magnificent Place de la Concorde.

The seating arrangement. In contrast with the antiphonal bench arrangement of the House of Commons, the Assembly meets in a semicircular hall with amphitheatrical seating. As the Commons plan is appropriate to a two-party house, so the French arrangement suits a body with a rainbow of parties whose political shades vary from royalist blue on the right to Communist crimson on the left. This use of "left" and "right" is to be taken quite literally, for, as the President of the Assembly faces the rows of seats, he sees the most conservative parties seated on his extreme right, the considerable Communist bloc on his extreme left, the Socialists next toward the center,

¹¹ This is discussed elsewhere. See p. 505.

and so forth. Parties are very particular that their seating assignment should reflect with as much precision as possible their degree of radicalism. The front seats are reserved for ministers, secretaries of state, undersecretaries, committee reporters, and others concerned with the business under discussion. High above these in the center of the semicircle is the seat of the president and below him is the pulpit-like tribune from which the members deliver their speeches.

Speeches in the Assembly. Members rarely choose to speak from their seats, but having obtained the floor, mount the tribune where they can face the entire Chamber. The very physical arrangement of the hall as well as French parliamentary tradition lends itself to formal speech-making rather than to the dull, conversational kind of address often delivered in the British parliament and in Congress. By the standards of the latter bodies, French parliamentary oratory seems florid and old-fashioned, with too much emphasis upon emotional appeal. The audience is frequently moved to cheers of jeers, and actual hand-to-hand scuffling as well as the exchange of unparliamentary insults has not been unknown in both the old Chamber and the new Assembly.

Keeping order. The president of the Assembly, of course, attempts to keep order by ringing his bell. In the face of continued and growing tumult he may exercise the *droit de chapeau*. This means that he puts on his hat as a notice that he will adjourn the sitting if order is not restored. Finally of course, he may rise, adjourn the sitting and leave while the deputies continue to scuffle in the aisles.

Powers of the National Assembly. It is perhaps significant that the name "National Assembly" should have been conferred upon the primary chamber of the legislature, for this title in France has always been associated with the supreme body. In the Third Republic it was the name given to the joint session of both houses which met to elect the President of France. If there were any doubt in the matter, the constitution would set it at rest with the unequivocal statement in Article 13: "The National Assembly alone shall adopt the laws. It may not delegate this right." As noted in the preceding chapter, it is clear that the Council was intended to be no equal of the Assembly but an advisory body, influential perhaps, but unable to oppose its will to that of the Assembly. The above-mentioned Article, too, would deny the authority which parliament formerly exercised to confer upon the executive in an emergency the power to issue decree-laws. Such authority, too freely granted in the past, was so abused by some French premiers, Laval in particular, that there was no disposition to allow it under the Fourth Republic. Nevertheless, there is evidence that the Assembly will not be bound by this

constitutional principle in what it believes to be a serious emergency.¹²

The Assembly's new powers. This powerful legislative body has also been granted two new powers: (1) It elects the members of the high court of justice at the beginning of each session, two-thirds of the thirty judges from among its own membership and ten from outside its membership.¹³ The high court is in reality a court of impeachment and acts upon cases referred to it by a special investigating committee which is also elected by the Assembly. (2) The Assembly also elects seven of the ten outside members of the constitutional committee which, under the chairmanship of the President of the Republic has the function of deciding upon the constitutionality of laws.¹⁴

Organization of the National Assembly. Each chamber elects its officers at the beginning of the annual session. In the case of the National Assembly, as in that of the House of Representatives, this is complicated by the fact that this chamber, at that moment, is merely a number of elected but unorganized individuals. The French solution is to have a provisional set of officers, the *bureau d'âge*. This consists of the oldest deputy as president and the youngest deputies as secretaries. This *bureau* examines and validates the mandates of at least a majority of the deputies, after which the Assembly is considered constituted. It continues to preside until a permanent president can be elected. No debates are permitted at this stage except speeches concerned with the election of a president, but it is now customary for the *doyen d'âge*, as temporary president, to be allowed to make a political address to the Assembly.

The permanent officers consist of a president, vice presidents, secretaries, and *questeurs*. Article 2 of the constitution provides that this *bureau* shall be elected by proportional representation of the party groups. This is extremely difficult as the posts are of unequal value. In actual practice the president is elected by majority vote and by secret ballot; the other posts are divided among the several parties and groups by agreement or by majority vote if agreement cannot be reached.¹⁵

The president. The president is the chairman throughout the annual session except when he designates one of the vice presidents to take his place. Many of his functions and powers are those usual to parliamentary chairmen.

¹² In August 1948, Paul Reynaud as Minister of Finance and Economic Affairs presented a bill to give the government decree powers in certain economic matters. Although challenged as to its constitutionality, the Assembly accepted the principle of the bill 386 to 201 and, after amendments, adopted it 325 to 215.

¹³ See H. L. Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 125-128 for excerpts from the law of October 27, 1946, creating this body and outlining its duties.

¹⁴ See above, p. 361.

¹⁵ Sometimes such agreement is hard to obtain. In spite of the fact that the Assembly had accepted René Mayer as premier on January 9, 1953, the deputies who voted him into office were not agreed on the presidency of the Assembly. Finally, on January 13, Edouard Herriot was re-elected but only after eleven hours of debate, three balloting, and a personal appeal by M. Mayer to the party leaders.

He enforces the rules of the Assembly, recognizes members who desire the floor, and has some disciplinary powers. He can simply call a member to order or call him to order with a direction that this be recorded in the official journal. He can further propose that the Assembly censure a member by vote or that it temporarily suspend him from attendance for fifteen meetings and deprive him of a proportional part of his salary.¹⁶ In case of general disorder he can suspend the session.

With the aid of his *bureau*, the presidents of the party groups, and the ministers, he prepares the order of business of the Assembly. In this he somewhat resembles the speaker of the House of Representatives rather than his English "opposite number." Like the American speaker, too, he has become less intensely partisan than in former days. During the Third Republic it was not unknown for the president to leave his throne and take part in debate. The fiery Gambetta, when he was president, used to recognize himself, descend to the tribune, and pour forth his impassioned oratory. This is unknown today and would be regarded as highly improper. Unlike his American counterpart he never votes, not even to break a tie. A tie vote defeats the proposal. Nor does he have any power over committee appointments. These are made by the party groups and voted by the Assembly.

His extraordinary functions. Under special circumstances he may step into the national limelight. As the representative of the supreme body, the National Assembly, he substitutes for the President of the Republic when that office is temporarily vacant. He may promulgate laws when the President of the Republic fails to do so contrary to his constitutional duty (Article 36 of the constitution). In case of a dissolution he replaces the premier (Article 52); he must be consulted prior to a dissolution (Article 51) and whenever a new premier is designated (Article 45). He is an *ex officio* member of the constitutional committee.

The other officers. The secretaries authenticate the record of each meeting of the Assembly and are concerned with the voting. They state the result of each vote and count the ballots when that method is used. The *questeurs* are the business managers of the Assembly. They look after the "housekeeping" details.

The conference of the presidents. Each party or *groupement* represented in the Assembly elects its own president. All of these, together with the president and vice presidents of the National Assembly, form the conference of the presidents. This body decides the order of business in the Assembly. The parties and groups are entitled also to proportional representation in the

¹⁶ Described above, p. 418. He has at his command the "garde du Palais-Bourbon" and can call upon the police and the military if necessary.

secretariat of both chambers. (Article 11), to representation in the temporary government formed after a dissolution (Article 52), and to proportional representation on the constitutional committee (Article 91).

Legislative personnel. As for the men who make up the National Assembly, there is a general impression that they do not measure up to the standards of the House of Commons. It is difficult to tell how much real basis for this impression there may be, because the quality of men who sit in legislative bodies is something that does not lend itself to statistical computation. There are no yardsticks to measure legislative capacity. It is all a matter of individual judgment colored by patriotism or political values. Today the deputy is less of a village ambassador than he used to be. He may owe his place on the list rather to his standing in the party and his legislative regularity than to his ability as a patronage-seeker.

"His Serene Highness, the deputy" is still a pivotal figure in French government. Even today he can, and sometimes does, bring about the fall of ministries. Through his party caucus he can bring overwhelming pressure on the ministers of his own party. His attitude is seldom one of quiet deference to his leaders. Any change that may be made in the electoral system is likely to increase his individual powers. It is he and his colleagues who make up the real sovereign body of France, the National Assembly. "*L'Etat, c'est moi*"—if he doesn't say it, he often thinks it.

Vocations in the Assembly. The National Assembly is unlike the House of Commons in that very few of its members come from families allied with the old nobility. It contains no considerable element analogous to the English squires or country gentlemen. There are many large landowners in France, especially in the western part of the country; but few ever get themselves elected. Unlike the American House of Representatives, moreover, the National Assembly does not contain a large number of men who directly represent the interests of agriculture, industry, and commerce. It includes relatively few men who have ever worked with their hands. The largest element is made up of professional men—lawyers, physicians, journalists, retired public officials, educators—and always a good many professional politicians.

Has the standard declined? Frenchmen complain that there has been a steady decline in the standards of ability, independence, and intelligence among their lawmakers during the past fifty years. In this they are not unique, for one hears the same complaint in England and America. They grumble that there are no Thiers and Gambettas in the National Assembly today, just as Englishmen lament the absence of Disraelis and Gladstones in the House of Commons, while Americans seek in vain for Websters and Clays among contemporary Congressmen. The trouble is that everywhere the world

idealizes the men of the past and exalts them to a pedestal on which their contemporaries would not have placed them. A legislative body may give a popular impression of mediocrity for the mere reason that the times give it nothing heroic to do.

The bourgeois flavor. In general, the membership of the Assembly carries a strongly bourgeois flavor. A man belongs to the *bourgeoisie* in France if he has saved some money (but not too much), or practices a profession (but not too successfully), or owns some hectares of good land (but not too many)—in other words, if he ranks in what Englishmen term the “middle class.” Men from this category usually begin their apprenticeship in a municipal council.¹⁷ Then, having been elected to membership in the Assembly, the bourgeois deputy combs Paris for a modest room in some unfashionable section where the American tourist had not stimulated the landlords to higher rentals before the imposition of rent controls. He shies at silk hats and swallow-tail coats, rides to the Palais Bourbon on the Métro subway or in a bus, gets his meals *en pension*, and votes against proposals to raise taxes.

Deputies are poorly paid. Members of both chambers are paid in accordance with the salaries received by the civil servants who occupy the next to highest grade. As of July 1, 1950, this was 1,180,000 francs per annum, which comes to about \$3,370 at present exchange rates but has a somewhat higher actual purchasing power in France. They receive no other allowances except a greatly reduced rate on transportation facilities by the purchase of a travel card good for one year. A deduction is made for a pension fund and they pay income tax on the salary. The deputies have complained bitterly that after their unavoidable expenses are met they have little more than 30,000 francs a year to live upon. They may be an exaggeration, but in fact they are given a miserable stipend by American standards. Of course many have hopes that they may become *ministre* and eventually secure a ministry. In view of the frequency of ministerial changes this is by no means a forlorn hope.

The deputy's working day. Meanwhile the deputy earns his modest stipend not only by working on a committee in the Assembly and taking his part in debates and votes, but also in attempting to satisfy the more important and importunate among his local supporters. His influence, insofar as he has any, must be used to secure honors and favors for his constituents. He must try to persuade the appropriate ministers and bureaus of the justice of his requests. The ministers may demur, the voters back home may be insistent, and the deputy does most of the worrying. His job is vexatious, none too

¹⁷ Except for those whose record in the “resistance” enabled them to begin a political career at the national level.

dignified, and ill-paid, which may be the chief reason why France does not get better deputies.¹⁸

Influence of newspapers. The oratory of the pen counts for more in France than in England or the United States. Candidates for the National Assembly make speeches, of course, but in reaching the public they place greater dependence upon the newspapers. Nearly all French newspapers are aggressively partisan and personal; they profess none of the party independence that marks some of the great daily journals in America. The French newspaper is a personality, not an institution. It is the organ of its editor and the French editor never hides his light under a bushel. His editorials are flaming appeals, and he prints them on the front page with his name signed to them. So, when an editor or one of his close friends happens to be a candidate, the newspaper will devote its whole energies to the task of electing him. The news of the day will go off the front page if necessary. In such cases the editor gives the public what he thinks the public ought to want, and the public takes what it gets.

Debates in the Assembly. There are real debates in the National Assembly, with set speeches eloquently delivered. These speeches are not usually long—they rarely exceed a half hour—but they are earnest, often impassioned, and sometimes brilliant. The deputies interrupt with applause or with taunts and cries of all kinds, while the presiding officer brings beads of perspiration on his face by vigorously ringing his bell for order. To the onlooker from the galleries these debates seem uproarious at times, but there is not as much personal rancor behind the oratorical barrages as there may seem to be. Deputies may shake fists at a safe distance on the floor or even throw out challenges to a duel—but an hour later they may be seen fraternizing in the corridors.¹⁹ In this respect the tradition of the Chamber of Deputies has been upheld by the National Assembly, but the Communist party has added a new note of bitterness to the display of noisy disagreement. The Communists have participated in scuffles of unusual length and violence and have shown less tendency to forget and fraternize after such outbreaks.

Besides the books listed at the close of the three preceding chapters, mention may be made of Eugène Pierre, *Traité de droit politique, électoral, et parlementaire* (5th edition, Paris, 1919); Charles Benoist, *Les lois de la politique française* (Paris, 1928); M. Aragon, *Guide pratique des élections législatives* (Paris, 1928); Henri Leyret, *Le gouvernement et le parlement* (Paris, 1919); Henri Maret, *Le parlement* (Paris, 1920); Pierre Dominique, *Monsieur le par-*

¹⁸ See Lord Bryce, *Modern Democracies*, Vol. I, p. 258.

¹⁹ See the excerpt from the article on "The Best Show in Paris" which is printed in Norman L. Hill and Harold W. Stoke, *Background of European Governments* (New York, 1935), pp. 299-301.

lement (Paris, 1928). For a collection of party programs of deputies elected on June 17, 1951, see *Assemblée Nationale Recueil des Textes authentiques des programmes et Engagements Electoraux des députés proclamés élus à la suite des Élections générales du 17 juin 1951*. Mention may also be made of M. Duverger et al., *L'influence des Systèmes Electoraux sur la vie politique* (Paris, 1950). François Goguel and Georges Dupeux, *Sociologie Electorale* (Paris 1951); François Goguel, *Géographie des Elections Françaises de 1870 à 1951* (Paris, 1951); and the various illuminating articles which appear from time to time in the *Revue politique et parlementaire*. See also Robert G. Neumann, "The Struggle for Electoral Reform in France" in *The American Political Science Review*, Vol. XLV (September, 1951). The procedural rules of the Assembly may be found in the latest revision of *Le règlement de l'Assemblée nationale*.

CHAPTER XXVII

Legislative Procedure in France

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.—Montesquieu

He that makes the law knows better than anyone else how it should be executed and interpreted. It would seem, then, that there could be no better constitution than one in which the executive power is united with the legislative.—Jean-Jacques Rousseau

Separation or unification of governmental powers? The above quotations from the writings of two distinguished French publicists indicate widely divergent ideas concerning the general structure of a government. In the United States the aphorism of Montesquieu was highly regarded by the men who framed the constitution in 1787, and a sincere effort was made to ensure that executive and legislative powers should never be "united in the same person or in the same body of magistrates." This relative independence of the two organs of government has been continued to the present day. The executive, in both the American federal and state governments, is not chosen by the legislature or directly responsible to it. But in France the makers of republican constitutions have leaned to the political philosophy of Rousseau on this matter and have given the legislature a dominating influence over the executive branch of the government. The constitutions of the Second, Third, and Fourth French Republics have alike made provision that the titular chief executive (the President of the Republic) should be chosen by a legislative body, not by the people either directly or through an electoral college, and that his ministers should be responsible to the legislators. In the French constitution of 1946 the dominating rôle of the National Assembly is its most outstanding feature.

What the legislative process involves. What is the proper function of a legislature? In general, legislative bodies have a threefold function: they make

the laws, they authorize the expenditures, and they investigate (or in some cases control) administrative actions. By legislating they provide a system of rules governing the conduct of the people; by adopting a budget they furnish the funds with which government can be carried on; and by means of inquiries, interpellations, and investigations they exercise a continuous supervision over the administrative authorities.

It requires rules of procedure. All this represents a vast amount of work, and no legislature would ever manage to get it done without rules of procedure. But these rules are not designed merely to expedite the passage of laws. Were that the case there would be no need for so many of them. They aim also to ensure economy in public expenditures, to safeguard the rights of minorities in the legislative chamber, and to provide channels through which the ministers or other executive officials may be kept within the bounds of law. What we customarily call the "process of lawmaking," therefore, is in reality a good deal more than that. It is a process of legislation, appropriation, and supervision.

LEGISLATIVE COMMITTEES

The committee system. The French chambers, like other legislative bodies, have always made use of committees of *commissions*, as they are more commonly called. In addition to special or sessional committees appointed for specific purposes, the old Chamber of Deputies maintained twenty regular committees (grand standing committees), each having forty-four members. These committees were reconstituted at the beginning of each year. Each committee was made up by assigning a proportionate representation to the various party groups in the Chamber as a whole. This procedure is being followed, in a general way, by the National Assembly of the Fourth Republic, to which the new constitution grants full power to "determine the number, the composition, and the jurisdiction" of its committees. By its rules of procedure the Assembly provides for nineteen regular committees, each composed of forty-four members.¹ They are chosen by the Assembly at the beginning of each annual session. Special or temporary committees may also be named when needed.

In order to give proportional representation on the various committees, the heads of the various party groups present to the president of the Assembly their lists of nominees in accordance with the proportional rule, and if there is any opposition or proposal to substitute names the Assembly decides the matter. No one may serve on more than two regular committees. Each com-

¹ Among the more important of these are the committees on foreign affairs, national defense, finances, economic affairs, labor and social security, education, and overseas territories.

mittee chooses its own chairman, two vice-chairmen, and two secretaries. Together these are known as the committee's *bureau*.

Committee meetings. The committees hold their sittings on Wednesdays and in the forenoon of other week days, these being reserved for them by the rules. But they may also meet in the afternoon if there is urgent work to be done. Each committee may designate one of its members to participate, in an advisory capacity, at meetings of the committee on finances when matters of interest to it are under consideration by the latter. Members of the ministry are entitled to attend meetings of any committee when they so request. Likewise the author of a legislative measure or constitutional amendment may appear at a committee session when these matters are under discussion, but must retire before a vote is taken. Sittings of French legislative committees are not "public hearings" in the American sense, but records of the proceedings are kept and may be examined by any member of the Assembly.

Projets de loi and propositions de loi. At least in nomenclature the French legislative process resembles the British by making a distinction between government measures (*projets de loi*) and private members' bills (*propositions de loi*). In Britain, however, the distinction is fundamental and means that the private member is virtually excluded from introducing legislation. Not so in France. The French deputy may introduce a *projet de loi*, providing he can persuade the ministry to give its blessing, as it sometimes does if there is enough pressure behind the legislation. Further, *propositions* are not infrequently passed. As regards the private member and his power over legislation, both the old Chamber and the new Assembly resemble the House of Representatives rather than the Commons. The right of the individual deputy to introduce bills, propositions, and resolutions is specifically guaranteed by Article 14 of the new constitution. Of course this does not mean that private members' bills stand the same chance of adoption as the ministerial measures. The economic council and the assembly of the French Union may also send bills for consideration. If a measure introduced by a private member in the National Assembly is concerned with an economic matter or relates to an overseas territory, it is sent to the appropriate one of the two foregoing bodies for its opinion before being considered by the Assembly. Such opinions must be rendered within twenty days but in case of emergency this may be reduced to two days. Proposals of legislation (outside of the budget and other appropriation measures) may also come to the National Assembly from the Council of the Republic, but, as already noted, such bills are not debated in the latter body before being transmitted.

The committees at work. Nearly a dozen pages in the printed rules of procedure are devoted to the work of the National Assembly's committees.

An absolute majority is essential for committee action on any matter. Any three members of a committee may demand that a recommendation be made by ballot. The chairman of a committee does not have the casting vote in case of a tie. In the case of a tie vote the proposal is deemed to have been rejected. After each meeting of a committee the names of those present are published in the *Journal officiel*.

How bills are reported. Under French parliamentary procedure, when a committee decides to report a bill it does not entrust this duty to its chairman. It appoints one of its own members to serve as *rapporteur* for the measure and it is his function to explain it on the floor of the legislative chamber. This it does even in the case of measures which have been initiated by the ministry—a practice which contrasts sharply with that of the British House of Commons. In that body a government measure is always presented, explained, and defended on the floor by a member of the ministry. In the American House of Representatives, bills are ordinarily reported to the House by the chairman of the committee which has considered them. But in France the “reporters” appointed by the committees to steer measures through the National Assembly are neither ministers nor chairmen; they are private members. The ministers and chairman of the reporting committee may join in the debate, and usually do; but they do not direct it.

Defects of the system. The practice of appointing *rapporteurs* to present committee recommendations is a survival from French parliamentary procedure under the Third Republic. Its results were not always satisfactory because of the lack of team play which resulted. There is much to be said for the English plan of having each minister pilot his own bills through the House. There is also a good deal to be said for the American plan of having the chairman of the committee do the steering. In both cases the responsibility is fixed and unified. The French method divides the leadership. Consequently it divides the responsibility and this would often have been fatal to important measures were it not for the fact that the reporters and the ministers have usually worked in coöperation. There is this to be said, also, that since a *rapporteur* has usually only one or two important bills per session he can focus his best efforts on them and become thoroughly conversant with all their provisions. Incidentally the successful steering of an important bill in the National Assembly may give a *rapporteur* both prestige and publicity, thus helping him to a place in the ministry.

The progress of a measure in the National Assembly. When a committee is ready to report a measure, the definitive text, along with the reporter's *exposé*, is printed and distributed.² The chairman of the committee asks that

² The committee, however, may recommend rejection of the measure or may transmit it to the National Assembly without any recommendation.

a time be set for its consideration. This request is considered by an *ex officio* body made up of the vice presidents of the Assembly, the chairmen of all the committees, and the heads of those party groups in the Assembly having at least fourteen members. When a day and hour is set, the Assembly gives its approval (as a matter of form) and the ministry is notified so that it can be represented.

On the day appointed for debating the proposed law, the reporter mounts the tribune and explains his committee's recommendation. Speeches dealing with the general principles of the bill may then follow, but questions relating to details and phraseology are passed over. No amendments are in order at this stage. When the debate on the general features of the bill has been finished, a vote is taken on the question of "passing to the articles," in other words, proceeding to a detailed consideration of the bill. If the Assembly votes *No* on this question the measure is defeated. But if it votes *Yes* the debate proceeds on the individual provisions and upon any amendments that may be offered. When this has been concluded the Assembly proceeds to a vote on the adoption of the *projet de loi* or the *proposition de loi* as a whole. Before this vote is taken, however, the Assembly may decide to send the measure back to committee for "revision and coördination." This action is usually taken when numerous amendments have been added in the course of the debate on the articles. Then when the committee finishes its work, another vote is taken by the Assembly on the whole measure as revised and coördinated. All these proceedings are counted as a "first reading."

At this stage the measure goes to the Council of the Republic. If it concurs without amendment, or if it fails to take any action within the allotted time, the Assembly proceeds to a second and final reading.³

THE DEBATES

Outsiders participate in the French debates. In the British House of Commons and in the American House of Representatives it is an unwritten rule that no one except a member may speak from the floor. Even ministers may not speak in the Commons unless they are members of the House. Congress is also averse to hearing the voices of any but its own members, although the president of the United States is given the privilege of reading a message to it at any time, and occasionally some distinguished visitor may be invited to address it. Members of the American cabinet do not speak in either House. If they attend they sit in the gallery. But in France it has been the custom to let nonmembers mount the tribune and take a hand in debates—ministers who are not members, undersecretaries, bureau chiefs, and even

³ What happens in case of disagreement between the chambers is described above, p. 405.

various experts who may be designated to explain the technical phases of a measure. These functionaries may be called in to elucidate, defend, or suggest changes. They have been especially in evidence during the debates on the budget.⁴ Expert officials from the various branches of the administrative service come in and are sent to the tribune to explain what the estimates mean. This plan is not without its advantages, for it means that the talk is by men who are close to the figures and know what they are talking about—which cannot always be said of the budget debates in some other legislative bodies. It should be mentioned, perhaps, that the right of ministers to attend meetings of both chambers in France is established by the constitution. The privilege of attendance on the part of their subordinate officials is a matter for each chamber to determine for itself. The rules of the National Assembly permit the chairman and the *rapporteur* of any committee to request that designated functionaries be allowed to assist them when measures are being debated.

Methods of limiting debate: 1. No long discussion of details. Debates on legislative measures might be greatly prolonged in France were it not for two considerations which have operated to keep discussion within bounds. One is the fact that most of the bills are relatively short and do not contain page after page of detailed provisions, as is the case with so many legislative measures in Great Britain and America. In France the details are usually left to be worked out by ministerial decree. This saves the time of the lawmakers, ensures a more careful consideration of details, and gives flexibility to the laws.

2. The *clôture*. In the second place, the rules of procedure allow the National Assembly to put an end to the debate on any clause or section of a bill by applying the *clôture*. A motion to apply the *clôture* cannot be debated, but before the motion is put an opportunity must be given for at least one member to speak against it. The *clôture*, if carried, does not debar a member of the ministry from continuing the discussion, and ministers have frequently taken advantage of this privilege. As a matter of fact the *clôture* has been used but rarely in France, much less frequently than in the House of Commons.

Methods of voting in the Assembly. In Great Britain and the United States all bills are given three readings. In France there are only two readings—one at the time of the bill's introduction in the National Assembly and the other at its final passage there. Other than the secret ballot that is taken for the election of the Assembly's president, members of the superior council of the judiciary, and so forth, there are *four methods* for voting on legislation: (1) The simplest method is by *show of hands*. If the secretaries disagree as to the result, (2) a *standing vote* may be used. More formal methods are used under special circumstances. If the previous methods still leave room for

⁴ For the special rules of procedure in relation to the budget, see pp. 432-434.

doubt as to the result, or if the government or the committee concerned so requests, or if the president of a group with at least twenty-five members makes a written request, or (by constitutional rule) if the vote affects the investiture of a prime minister, ministerial responsibility, or the overcoming of Council amendments that have been passed in the Council by absolute majority and *scrutin public*, the method used is (3) *scrutin public ordinaire*. In such cases a balloting urn is passed from seat to seat by the *huissiers* or attendants and into this urn each member drops his ballot. The ballots are in the form of small slips of paper which are provided by the secretariat at the beginning of each session. Every member is given a package of these slips, of which some are white and some are blue, each slip having his name printed on it. He keeps these slips in the little swivel desk which is attached to the back of the seat immediately in front of his own. When a balloting takes place he uses a white slip to vote *Yes*, or a blue slip to vote *No*. Thus there is no secrecy in this form of balloting; each member can see how his neighbors vote. By French tradition deputies may cast ballots for their absent colleagues when this method is used. Finally, (4) if the result of this ballot does not satisfy the minority, fifty or more members, who are actually present, may demand *scrutin public à la tribune*, a roll call vote. In this case the names of the members are called in alphabetical order. As each name is called, its owner walks to the tribune and hands his white or blue ballot to one of the secretaries. No absentee ballots are cast in this case. To prevent the use of this slow method as a "filibustering" device, a 1947 resolution provides that this method can be demanded only once in the voting on a single legislative issue by the same parliamentary group.

When a measure has been passed by the National Assembly at its final (second) reading in accordance with the procedure required by the constitution (including its transmission to the other chamber), it goes to the President of the Republic for promulgation. This promulgation must be made within ten days or within five days if the National Assembly declares an emergency unless the president chooses to send it back within this period for reconsideration. Such reconsideration he has the right to request on any measure, and his request cannot be refused. The demand for reconsideration is made by the president in a message stating his reasons. On receiving the message, the two chambers proceed to reconsider the bill, and if it is repassed under the constitutional procedure which has been outlined above (p. 372), it goes again to the President of the Republic for promulgation. If he does not promulgate within the time limit any law which has been enacted, either with or without reconsideration, the president of the National Assembly is directed by the constitution to take over the function of doing so. After promulgation a law is printed in the *Journal officiel*.

BUDGETARY PROCEDURE

The French budget system: 1. The estimates. In France, as in other countries, the most important business of the legislative body is the levying of taxes and the making of appropriations. France has had a national budget system for many years, and in its main features this system is like that of Great Britain. The work of framing the budget is begun each summer by the minister of finance who requests the other ministers to prepare their estimates for the next fiscal year. When these estimates have been obtained they are consolidated into one huge document and placed before the ministry for revision. Accompanying the estimates is a statement, prepared by the minister of finance, showing the anticipated revenues. The ministry revises and adjusts the figures as may seem advisable, its aim being to bring the ordinary expenditures within the limit set by the estimated national income.

2. The two types of expenditure. The practice in France has been to make a distinction between *ordinary* and *extraordinary* expenditures. The former include, or are supposed to include, all the current expenses of government; the latter comprise expenditures which are not of a current nature, such as the cost of carrying on a war or restoring devastated territory or providing some great public improvement. Extraordinary expenditures are not paid out of current revenue but by borrowing money. The distinction is sound in principle but in practice has left much to be desired. It offers a strong temptation to secure a "balanced budget" by transferring to the extraordinary list things which do not really belong there. French ministries did this on a considerable scale after the First World War. Billions of francs were borrowed for extraordinary expenses on the assumption that the money would be repaid out of German reparations which ultimately were not forthcoming. The result was a huge accumulation of national debt and an overissue of paper currency. Then the Second World War resulted in a far greater orgy of borrowing and a further decline in the value of the franc.

3. The *projet* is laid before the Assembly and referred to the budget committee. When the ministry has finished with the estimates of receipts and expenditures, they are presented in a voluminous *projet* to the National Assembly through its secretariat. This is done by the minister of finance who may use the opportunity to give the Assembly a general review of the government's fiscal affairs. But there is no regular "budget speech" as in the House of Commons. The Assembly, after hearing the minister's survey, refers the whole matter without debate to its committee on finance, which is the most important of all its standing committees. This committee then pitches into work on the ponderous *dossier* and may spend months at its task. Public hearings are not held, as in Congress, but the committee consults freely with the financial

officers of all the ministerial departments.⁵ In addition it is the duty of the *Cour des Comptes* to help the Assembly and its committees by making studies and investigations concerning public revenues and expenditures. In order to prevent what has been a matter of frequent abuse in the American House of Representatives, namely, the practice of tacking "riders" (that is, non-financial provisions) to the appropriation bills, the French constitution specifically prohibits this practice.⁶

4. The budget debate. When the committee has concluded its work, the revised budget is laid before the Assembly, where it is dealt with like any other government measure. The *rapporteur* of the committee on finances, not the minister of finance, is the one who presents it. As noted above, this is in sharp contrast with the English practice of having the chancellor of the exchequer guide the budget through the House of Commons. Nor does it closely resemble the procedure in Congress where the chairman of the committee on appropriations is the one who presents the budget to the House and tackles the difficult job of getting it through. The French *rapporteur*, by the way, usually handles his task efficiently. He sits in a front seat during the budget debates, with the members of his committee alongside him. As groups of items are taken up in succession he sees to it that questions are answered and objections met.⁷ In the old Chamber of Deputies, the minister of finance also took a prominent part in the debate, and he continues to do so in the National Assembly; but the committee's chief reporter is the man who pulls the stroke oar.

There is no rule in France that proposals of expenditure can be made only by a minister. There is one other feature in which French budget procedure differs from English, and it is of real significance. Every student of English government is cognizant of the famous rule which provides that no proposal of expenditure can be considered by the House of Commons unless it emanates from the crown, that is, from the ministry. In the rules of the French National Assembly there is no such provision, nor could there be, because the constitution definitely stipulates that members of the Assembly "shall have the right to initiate appropriations." It also provides, however, that no proposals which would tend to increase appropriations already decided upon, or create new ones, may be presented during the discussion of the budget or of prospective or supplementary appropriations.⁸ In other words, when an appropriation has been voted, no proposal to increase this appropriation is in order. The purpose of this limiting provision is to ensure that the budget will

⁵ The committee may not approve the government's plans and may succeed in getting them modified. This was done with several taxation items in the budget adopted in December, 1950.

⁶ Art. 16.

⁷ The work has now become too heavy for a single *rapporteur*, so it is usually divided among several of them—each having responsibility for a portion of the budget.

⁸ Art. 17.

not be torn asunder by a flood of spending proposals put forward by individual deputies or groups of deputies.

The budget in the Council of the Republic. When the budget law has passed its first reading in the National Assembly, it goes to the Council of the Republic. There it is examined in the way prescribed by the rules of that body. Within sixty days it must be returned to the Assembly with or without proposed changes, but this interval of sixty days may be reduced to such time as does not exceed the time "taken by the National Assembly for its consideration and vote." On the other hand, the Assembly may give the Council an extension of the regular time limit. Then the budget goes back to the Assembly, where it is given its second reading and adopted, with or without amendments, under the procedure which is followed in the enactment of other laws. The President of the Republic, when he receives the budget law for promulgation, may send it back to the National Assembly for reconsideration, starting his reasons for such action. While the Assembly must comply with the president's request for consideration, it is under no obligation to make any changes that he may recommend.

The Assembly's control of finances. From the foregoing brief outline of budget procedure, it will be seen that although the control of national finances exercised by the French National Assembly is not so complete as that of the British House of Commons, there is a considerable resemblance between the two. In both countries these two bodies have the sole initiative in budgetary matters. In both countries a full account of all money spent during the preceding year must be laid before the representatives of the people. While it is true that the Council of the Republic may send the measure back with suggested changes, and the House of Lords may not, this difference will probably not be of great practical significance because the National Assembly will have its way whenever a majority of its full membership so insists. In the United States the situation is quite different. While the Senate in Washington has no initiative in financial measures, it may amend them with a free hand and sometimes it has used this amending power to produce what is in fact an entirely new bill; and when the House of Representatives declines to concur, the issue goes to a committee of conference where the Senate often wins its point. One might sum up the matter in this way: the House of Commons has complete control of national finances both in law and in fact; the French National Assembly is able to exercise it in fact, although not in law; while the House of Representatives has it in neither.

Methods by which the National Assembly controls the ministry:

I. Informal. The National Assembly's control over the council of ministers does not stem entirely from its control of the purse strings. The constitution

expressly provides for the collective and individual responsibility of the ministers to the assembly. That was also the practice of the Third Republic, although not based upon such constitutional provision. There are various ways in which this responsibility is effected. In a general way the ministry is always under the requirement of securing the approval of its measures in the Assembly, where it is subject to the give-and-take of debate. Because of the party system, ministers are continually called upon to explain and defend their policies before the various party meetings (the executive committee, the political bureau, the party congress). Ministers are constantly besieged by deputies with requests for their interference to correct bureaucratic mistakes, and so forth.

2. Questions. Direct methods of controlling the ministry include formal questions in the Assembly. Such questions may be written and printed in the official journal. The minister concerned must give a written reply within a month unless he requests an additional month or can refuse a reply on the ground that the "public interest" prevents. Questions are often used by deputies to get an answer desired by some constituent on a matter of personal interest. Oral questions may be addressed to ministers on the one day per month reserved for them or, by custom, on Fridays when the order of the day is preceded by ten oral questions. It is customary for the minister to reply and for the questioner to comment on the reply. Five minutes only are allowed to each speaker and there is no debate on the exchange. The repeated absence of a minister on days when an embarrassing question is on the agenda may lead to an interpellation.

3. Committees. Permanent committees often invite ministers to explain matters to them although the ministers cannot be compelled to do so. As in the United States, special committees of inquiry are sometimes created by the Assembly. They have often been used, again as in the United States, to blacken or whitewash the executive. Those not created from such political motives have been useful in technical and administrative inquiries.

A traditional feature of French parliamentary procedure. A much more effective means of enforcing the continuous responsibility of ministers is provided by the procedure known as the interpellation. This is a feature which deserves some explanation because it contributed greatly to the frequent fall of cabinets during the sixty years of the Third Republic. More than ninety French ministries went in and out of office during the period 1875-1940. Thus their average tenure was less than eight months. At Westminster a ministry rarely goes out of office except after an adverse vote of the people in a general election; at Paris most ministries have been given their *coup de grâce* by an adverse vote on an interpellation. But what is an interpellation? An

interpellation is a formal question framed by some member of the Assembly and addressed to a minister; it differs from the ordinary question in that it must be in writing and sent to the president of the National Assembly with a statement of its subject.⁹ When he has received the request, the president of the Assembly notifies the ministry and at the following session the Assembly decides on a time for debate. The debate on this (the time of the interpellation debate) is not supposed to touch upon the actual subject of the interpellation, but the government can, if it chooses to do so, make the *date* a matter of confidence, either specifically or by implication, and so this debate may amount to a sort of preinterpellation.¹⁰

The interpellation proper is a general debate in which all members can participate, and the sins and virtues of the ministry may be given an extended examination subject only to the limitations of *clôture*.

Putting the *ordre du jour*. The motion to close an interpellation debate is made in some such form as this: "The Assembly, having heard the explanation of the minister, passes to the order of the day"; or "The Assembly, having heard the declaration of the minister, and being convinced that the grievances voiced during the course of the debate will be duly set right by the government, returns to the order of the day." Several motions, in fact, may be offered, in which case the simple motion to resume business, accompanied by no qualifying clause, is always voted on first. Sometimes a ministry has rested content with this simple motion, but as a rule it has insisted on an expression of confidence—an *ordre du jour motivé*, it is called. During the Third Republic the motion sometimes would be vague, a motion of "demi-confidence," as it was called. In such a case the ministry would have to decide whether to resign or not.

Significance of the interpellation. Now the significance of this procedure arises from the fact that a minister is placed in a very embarrassing position unless he can obtain a favorable vote on the question of resuming routine business. During the Third Republic the ministers usually resigned in a body when the Chamber of Deputies refused its support on an interpellation. They have continued to do likewise in the Fourth Republic, even though they are under no constitutional requirement to do so.

Most interpellations do not embody a mere quest for information. When

⁹ This statement is brief and contains no argument: "the wheat crisis," "the tax policy," or simply "the general policy of the government."

¹⁰ For example, when the new cabinet members in the Marie government took their places on July 27, 1948, a Communist deputy at once filed a request to interpellate the government on "the composition and general policy of the government." M. Marie asked that this request be postponed indefinitely and won his point by a vote of 330 to 197. In effect, this gave his cabinet a vote of confidence. The opposite result was obtained by M. Schuman when he offered a cabinet for Assembly approval in September, 1948. He lost a motion to postpone interpellation by six votes and resigned at once.

it is information that a deputy wants he can get it more quickly and more easily by asking an ordinary question. The purpose of the interpellation is twofold: first, to draw the attention of the legislative chamber (and, incidentally, of the newspapers) to some particular phase of ministerial policy which is believed to be open to criticism; second, to precipitate a vote which the framers of the interpellation hope will be adverse to the ministry and encourage its resignation.

Objectionable features of the French interpellation procedure. The interpellation has been a feature of French parliamentary procedure for so long a time that it would now be difficult to abolish it. Yet most students of comparative government look upon the interpellation as a noxious weed in the garden of politics. Interpellations are not essential to the maintenance of real ministerial responsibility, for England has had no difficulty without any such procedure, and so have the British self-governing dominions. French ministries have found themselves under almost continuous threat of adverse votes. It became a trick for the opposition to strew banana skins in the ministerial path. French ministries, therefore, got into the habit of making practically everything "a matter of confidence" and producing needless ministerial crises.

The basic reason for ministerial instability in France. The traditional instability of French ministries, however, has not been due to the interpellation procedure but has resulted from the multiplicity of the party groups in parliament. French cabinets must consequently be coalitions, depending for their support on two or, almost always, several groups of deputies among whom there is no genuine cohesion. In the British House of Commons an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion he can move to reduce the salary of a minister. And if either of these motions should be adopted it would be construed as a lack of confidence in the ministry. Such motions are made from time to time in the House of Commons, but they are voted down. This is because the British ministry can count upon a united party following in the House. In Republican France the ministers have never had any such unified, dependable support. This is the basic reason why French ministries have such a short expectancy of life.¹¹

The present rule. In order to increase ministerial stability the constitution now provides that the ministry need not resign unless the question is put directly as a motion of censure or confidence. A *motion of censure* can be moved by any member and may come at the close of an interpellation or can be debated on a date fixed by the Assembly. A *motion of confidence* can be moved by the ministry only, acting through the prime minister, and always relates to a specific topic (financial policy or the like). Furthermore, a full

¹¹ For examples of such instability and the politics of recent ministerial crises, see pp. 457-461.

day must elapse between the putting of the motion and the vote upon it. That is, if the motion is made on Wednesday, the vote cannot be taken until Friday. The vote itself must be by public ballot or, if requested by fifty deputies, by public (roll call) ballot at the tribune. To be compelled to resign, the government must have an absolute majority of the Assembly against it. Similarly if it makes the rejection of a bill a matter of confidence, the bill may pass and the government remain in office if the majority for the bill was less than an absolute majority.

Its practical effect. This attempt to ensure the stability of ministries has not been effective. No ministry can carry on as though nothing had happened when it has had a vital part of its program rejected, even if the rejection is by less than an absolute majority. Actually, insofar as Article 49 of the constitution enables the Assembly to reject ministerial advice without forcing it out of office, it strengthens the Assembly rather than the ministry.

The "pseudo-question of confidence." In actual practice the government may say at any time: "If this bill is not passed we shall resign," and thus make the matter one of confidence in fact if not in law. This "pseudo-question of confidence," as the French constitutional lawyers term it, is the *real* question of confidence. The other side of the medal is the "pseudo-vote of censure," whereby the opposition parties without any formal compulsion upon the government can put through a motion of "defiance" which may well lead to the resignation of the ministry.

Individual ministerial responsibility. The Assembly may pass a motion of censure addressed to an individual minister. The assumption here would be that the cabinet is not to be held responsible for the minister's blameworthy action—a rare event in view of cabinet solidarity. Usually it is up to the prime minister and cabinet to decide whether or not to throw their attacked colleague to the wolves.

Dissolutions. There was much argument in the constituent assemblies regarding the use of a ministerial power of dissolution to enforce cabinet stability. In England, as we have seen, the cabinet may "crack the dissolution whip" over recalcitrant supporters in order to compel their support lest the crown be asked to dissolve parliament. Many French statesmen have favored a similar arrangement for France. Article 51 of the constitution provides that the ministry may exercise a very limited power to dissolve the National Assembly. This right applies only under the following circumstances: first, if the current legislature has been in session for at least eighteen months; secondly, if, after this eighteen-month period, there have been at least two ministerial crises within a subsequent period of eighteen months. (These must have been *formal* crises, that is, produced by the special constitutional majority on a question

of censure or confidence as required by Articles 49 and 50 of the constitution. (Cabinet resignations otherwise produced do not count.)

All attempts to give the ministry a power to dissolve the Assembly as in Great Britain were defeated in the constituent debates. The rule adopted, as outlined above, obviously gives the ministry this power only under rare and special circumstances. Indeed a number of cabinet crises occurred during the first two years of the new régime without bringing Article 51 into play. It is a simple matter, if the Assembly so desires, to make the position of the government untenable without any use of the formal censure procedure which would give the prime minister the power to dissolve the legislature. The Assembly can simply refuse credits or turn down important bills. The withdrawal of one of the parties forming the coalition also may cause the cabinet to fall.

When the dissolution is legally possible, it is up to the ministry to decide whether to use it or not. The advice of the president of the National Assembly must be asked but need not be heeded. Once the ministry has decided upon the exercise of the dissolution power, the President of the Republic automatically issues a decree of dissolution.

This decree ends the life of the Assembly at once and requires a general election not sooner than twenty days nor longer than thirty days after dissolution. The cabinet remains in power during this period with two important exceptions: The prime minister and the minister of the interior must resign and are replaced by the president of the National Assembly as acting premier and someone nominated by him, with the approval of the Assembly's *bureau*, as acting minister of the interior. Thus the law provides that these two key positions in an electoral struggle will not be in charge of men who have just lost their places as a result of Assembly action, and who might be supposed to be hostile to the dissolved Assembly. Furthermore, the cabinet is enlarged to include, as ministers of state, representatives of groups hitherto unrepresented in the government.

The Assembly in action. Among the thousands of Americans who go to Paris, few ever think of visiting the Palais Bourbon and watching the process of lawmaking under French procedure. This is true even of Americans who are actively interested in politics at home. Yet the place is worth a visit, and admission to the galleries can be had for the asking. There is a fair chance of arriving in the midst of an exciting debate, and in any event the proceedings seldom bear much resemblance to a funeral service. The visitor will be surprised at the apparent informality with which the debates are conducted. If he understands the language he will be exhilarated by the swift and often brilliant exchanges of *repartée*. And if, perchance, his visit happens to occur when a highly controversial matter is under discussion, he will see a sight that

is not soon forgotten. The excitement, the gesticulations, the crowded galleries, the thronged corridors, and all the rest of it—they constitute a spectacle that only the French can provide. Outside the Palais the bookmakers and gamblers may be laying wagers on the outcome, as though the whole proceeding were a horse race or a prize fight. Surveying it all, the visitor may wonder how a great nation manages to get its laws made in this way. The answer is that it doesn't.

In all systems of representative lawmaking, the American system included, most of the real work is done off the floor. Measures of importance are drafted by administrative experts; they are considered by committees, and before the final debate takes place the legislators are sure to hear arguments, pro and con, from every interest that is involved. Most of them have made up their minds before the issue nears a vote. The oratorical outbursts in a legislative chamber rarely have much influence on the outcome. They do serve to impress the voters back home. One might almost say that legislators do not make the laws; they pass them. But the ministry is always at their collective mercy.

General Procedure. The *Règlement de l'Assemblée nationale* and the *Règlement du Conseil de la République*, that is, the printed manuals of rules for the two chambers, are indispensable aids in the study of their procedure. The standard French treatise on parliamentary law and methods is Eugène Pierre, *Traité de droit politique, électoral et parlementaire* (5th edition, 2 vols., Paris, 1929). Interesting comments on French parliamentary methods under the Third Republic may be found in Sisley Huddleston, *France and the French* (2 vols., New York, 1925); W. L. Middleton, *The French Political System* (New York, 1933); André Siegfried, *France: A Study in Nationality* (London, 1930); and Alexander Werth, *France in Ferment* (New York, 1934).

Legislative Committees. The best and most comprehensive study of the old system is R. K. Gooch, *The French Parliamentary Committee System* (New York, 1935), but attention should also be called to Joseph Barthélemy, *Essai sur la travail parlementaire et le système des commissions* (Paris, 1934).

CHAPTER XXVIII

French Political Parties and Politics

To keep united, the only way is to stay disunited.—Jules Ferry

A word of caution. The first thing that the American student of French politics ought to do (if he can) is to banish all home-grown political notions from his mind. He should approach his study of the French party system as though he were a man from Mars, without any ideas as to why political parties exist, what they do, and how they do it. For the American and French party systems have very little in common except a mutual desire to get control of the government. They are unlike in their organization, programs, technique, and procedure. To make the confusion worse, the French use a political terminology which is not unlike that with which we are familiar in America, but which usually means something different.

In the United States a political party is a nation-wide organization with a large and fairly stable membership. Each party has its definite group of representatives in Congress and in the state legislatures. Party organizations in the country and party groups in the legislative body are closely related and usually (although not always) work in unison. In France this has never been the case. Party organizations in the country and party groups in parliament have had, in many cases, no close relation at all. Members of a party group in the legislative bodies during the Third Republic sometimes belonged to more than one of the party organizations; the names of the groups in the Senate were not always the same as those of party groups in the Chamber of Deputies, and there were some party organizations in the country which had no representation in parliament at all.

Both the party groups in parliament and the party organizations outside were in constant flux, shifting their membership to some extent within brief intervals. That, in part at least, was the reason for the frequent reshuffling of ministries. A party *groupement* in parliament did not hold itself chained to any definite program or committed to the unswerving support of any administra-

tion. The Communist group was an exception to all this, however, and to a certain degree the same was true of the Radical Socialists, who, by the way, were not radical at all.¹ One of the lessons which the Communist party has been teaching the other groups is the lesson that political strength comes through party discipline, organization, and solidarity.

The traditional multiplicity of party groups and the reasons for it.

In 1937, the *Political Handbook of the World* listed thirteen party groups in the Chamber of Deputies. They had a membership ranging from five to one hundred and forty-seven. In addition there were twenty-nine deputies who set themselves down as *non-inscrits*, that is, belonging to no party group at all. Foreign students of French politics tried to account for this *morcellement* of parliamentary groups in France; but the reasons given were neither few nor simple. In brief, however, the multiplicity was usually explained by: (1) the lack of continuity in French constitutional organization since political parties came into existence; (2) the "negative individualism" of the French political temperament; (3) certain features in the system of parliamentary procedure, (4) lack of party discipline; and (5) the periodical injection into French politics of personal issues, not involving fundamental questions of public policy, which have tended to split the party groups into fragments and produce new alignments.

1. The lack of political continuity. At any rate, no one can expect to understand French political parties and party politics of today without some knowledge of their historical background. To begin with, it should be reiterated that in a political sense modern France is very modern. Government by political parties did not exist in France before the Revolution of 1789, nor did it make much real headway for almost a century after that date. During most of the nineteenth century the fundamental issue in French politics concerned the very nature of the state, whether it should be monarchical, republican, imperial, or something else. No matter what the form of government during these years there were large numbers of irreconcilables who wanted a republic when a monarch or emperor was on the throne, or who clamored for a monarch during the republican interludes. Political parties, as Englishmen and Americans understand them, cannot exist and develop unless there is something approaching a consensus on the general nature of the commonwealth. And it is only during the past fifty or sixty years that the French, as a nation, have reconciled themselves to the republic as a permanent institution. Even in the years preceding the recent war there were small groups of royalist and fascist extremists who would have liked to see a monarchical form of

¹ Members of the Radical Socialist group were nicknamed *radissons* (radishes), being "red on the outside and white inside."

government restored in France, reactionaries who had never reconciled themselves to the results of the Great Revolution.²

To grow strong and stable it is necessary for a political party to accept the existing regime. If its aim is to wreck the state, and not merely to change the government, it cannot become a party of "loyal opposition." A considerable minority of the French people, moreover, accepted the Third Republic without enthusiasm, giving it lip service but consistently stressing its shortcomings. The same attitude seems to prevail with reference to the new-born Fourth Republic. The powerful Communist party, for example, avows its adherence to a republican form of government, but its program envisages a dictatorship which would bear little resemblance to a republic as Americans or Frenchmen understand the term. Similar fears are entertained by many of the Left about the political objectives of General Charles de Gaulle.

2. The French temperament. In the second place, the *morcellement* of political parties and parliamentary groups in the Third Republic was probably due in part to certain traits in the general temperament of the French people. National temperament, of course, is a compendious term that can be utilized to explain or excuse almost any eccentricity in government. Yet the individualism of the people is a well-recognized trait of the French national character. It differs, however, from the individualism of the Anglo-Saxon. The reasons for this difference make a long story, too long to be narrated even in outline here.³ But it is a truism that the average Frenchman, despite his emotional exuberance on election day, is not really interested in politics and does not readily lend himself to party organization or discipline. This is particularly true of the small farmers who make up half the total population. The French peasant will work himself into paroxysms over some real or imaginary private grievance (such as a trespass on his little farm), while the townsman will induce apoplexy by the fervor of his interest in the question as to whether some side-street shall be renamed Rue Gambetta or Rue de Gaulle. But great issues of public policy often leave him unperturbed. It takes something more than a commotion in the "Folies-Bourbon" (as he nicknamed the old Chamber of Deputies) to ruffle the serene disregard of the average *bougnat* for happenings outside his own community. Principles and ideals he will discuss with vehemence, but their application to the problems of everyday politics—that is a matter which the French voter too often regards with quiet indifference. Furthermore, when he does get aroused by a political controversy, he likes to cast his ballot for some party group to which he can give 100 per cent approval, and

² C. T. Muret, *French Royalist Doctrines since the Revolution* (New York, 1933).

³ Those who are interested in the general subject will find it fully discussed in Ernest Barker, *National Character and the Factors in Its Formation* (New York, 1927).

this is not always easy for him to do. Hence his readiness to join some new group.

So party divisions in France often have not been based upon broad divergences of public policy. At the same time the differences between the extremes of Left and Right have been far wider and deeper than anything we are used to in the United States. In general, the rightist groups have drawn their strength from the rural regions, especially from the ancient provinces of Normandy and Brittany. The leftist groups have their strongest following in the industrial cities of the North and in the working-class suburbs of Paris called the "Red belt." France south of the Loire, commonly known as the *Midi*, has traditionally followed a course between the two extremes, although today there is much Communist strength in the southern departments.⁴ In general, however, the small farmer has been the sheet anchor of conservatism.⁵ From generation to generation the rural voter learns little that is new—and he forgets nothing. "We don't like the English," said a French peasant to an American officer during the invasion of Normandy, "because they behaved very badly hereabouts during the Hundred Years' War"!

3. Certain features in procedure. The crumbling of parliamentary groups in France has also been due, in part at least, to certain features of procedure, notably the system of *ballotage* or second elections, the method of organizing the committees in parliament, the interpellation, and the practice of putting government measures in charge of reporters rather than of ministers. Of course it may be replied that these things are not the causes of disintegration but the results of it. Perhaps that is true. The *ballotage* encouraged small party groups to enter their candidates in the first election with the hope that they could throw their support to someone else in the second, for a suitable consideration. The interpellation procedure has also helped to keep the groups in flux, although it is probably that if any single group could become strong enough to command a clear majority in the controlling legislative body, the interpellation procedure would not be of great consequence. All in all it would appear that the success of the parliamentary system of government in France must inevitably depend upon the consolidation of existing party organizations and groups in such a way as to afford the ministry a reasonable assurance of stable support.

4. Lack of party discipline. The lack of party discipline in the Third

⁴ Communist voting strength in the South is explained to some extent by the tendency of the peasants there to vote for whatever party is farthest to the Left. Perhaps many of these are "protest" votes and would not be cast were there any danger of the Communists actually coming to power.

⁵ See article by Gordon Wright in E. M. Earle (ed.), *Modern France* (Princeton, 1951), for the Communist attempt to convert the peasants.

Republic was due to the fact that a politician's parliamentary career depended upon a number of factors other than his consistent support of a given policy or leader. In the first place, the single-member district system and the large number of parties led to the organization of personal machines. The deputy depended upon his friends and neighbors for election, and he kept his support by performing services for them and retaining their personal loyalty. In the Chamber of Deputies he might further his career by an abrupt change of party or group at the psychological moment. He felt quite secure in doing this because it would annoy few if any voters and because the national party organizations seldom could have much to say about his renomination. His idea was to abandon a falling ministry and attach himself to a rising one at the moment when his support would command recompense in the form of an official appointment or something else. Finally, he was not endangering his tenure of office because the defeated ministry could not dissolve parliament. This lack of the "dissolution whip" was of the utmost importance as a factor in ministerial instability. In order to strengthen his varying power he sometimes affiliated himself with others in a parliamentary bloc under some name redolent of republicanism and reform, but having no existence as a party outside parliament.

All this led to the success of men who were adept in the arts of intrigue and manipulation rather than consistent supporters of a certain policy. The cynicism of the French voter was echoed by the cynical and self-serving deputy. The voter's cynicism is well exemplified in the old story about the constituent who asked his deputy what party he now belonged to. "Why," replied the deputy, "the same one as when I was elected two months ago." "Ah, then," said the voter, "you're making no progress at all."

THE SERIES OF POLITICAL SCANDALS

5. The political injection of personal issues. During the sixty-five years of the Third Republic a disorganizing factor in French party alignments was the periodic injection of personal, racial, or otherwise extraneous issues. Nothing has seemed to stir the emotion of the French electorate like a controversy which revolves around some personality, especially if there be a reasonable amount of scandal attached to it. Such controversies usually cut across party lines and break them down. At least six or seven convulsions in France during the past sixty years have helped compel regroupings to the detriment of stability and party discipline. These episodes would hardly be worth recounting here were it not for the sidelights which they shed on the political psychology of the French electorate—something that is not altogether changed by any mere transformation of a Third Republic into a Fourth.

(a) The Wilson scandal (1886). The first *contretemps* was the Wilson scandal of 1886. A daughter of President Grévy married an expatriated Englishman, Daniel Wilson, and brought this son-in-law to live in the executive mansion. Sheltered under the same roof with Grévy, the Englishman was believed to exercise a sinister influence over the octogenarian chief of state. At any rate he was quite ready to tell his intimates about what he could do in the way of getting presidential favors for the right people. It presently developed, moreover, that various applicants had paid good money to shady go-betweens in the expectation that they would be given rank in the Legion of Honor.

The ousting of Grévy. An investigation exonerated President Grévy from any share in the profits of this trafficking; he was merely the victim of a misplaced family confidence; but public sentiment could not now forgive his initial fault in having taken this miscreant from a "nation of shopkeepers" into the honored precincts of the Elysée. So the Paris cabarets rang with the frivolous refrain, "*Ah! Quel malheur d'avoir un gendre!*" and the old man had to go. Naturally the episode was used by the monarchists and others of the extreme Right to discredit the Moderate Republicans who had chosen Grévy for the chief executive office and from whose ranks he had risen to his post of leadership. It broke down a party that was on the way to become as strong as the Liberals in England.

(b) The Boulanger agitation (1885-1891). Much more dangerous to the security of the republic, as well as volcanic in its effect on party groupings, was the Boulanger agitation which began about 1885 and did not end until 1891. Boulanger was a general in the French army, by nature aggressive and with a flair for publicity. Incidentally he was master of the demagogic arts, and although a flabby character and a coward (as later events proved), he managed to acquire an immense popularity.

The general's historic rise. Boulanger first leaped into the headlines as a jingo and militarist. His chief assets were a uniform, a cocked hat, a black horse, a blond beard, and plenty of promises; but his popularity caused him to be taken into the cabinet as minister of war (1886). Thereupon he startled the world by suggesting that France should actively prepare for a war of revenge against Germany. As *Le général de la revanche*, he was at once glorified by his million admirers. Apart from the flagrant impropriety of his proposal, emanating as it did from a minister of war, there was the fact (obvious to all intelligent Frenchmen) that a single step in any such direction would have meant suicide for France. Germany would not have waited until France could make ready for a war of revenge.

His pose as a martyr. In any event the Berlin authorities lost no time in

branding Boulanger as a menace to the peace of Europe and virtually demanding his exclusion from the ministry. The French government had no option but to accede, whereupon Boulanger was able to pose as a martyr to republican impotence. Extremists from both flanks quickly rallied to his support, for they were willing to see the Third Republic overthrown and did not much care who accomplished it. It was their plan to use him merely as a *démolisseur*, not to set him at the head of a new government. Boulanger also sought to gain support from the church in France and in some measure succeeded. Presently he found himself at the head of a strange political ménage comprising irreconcilables of both the Right and the Left—both ends against the middle.

His success at the polls. With this combination behind him, Boulanger became, in 1888, an antiministerial candidate for election in several of the departments. (At this time elections to the Chamber of Deputies were conducted under the plan of *scrutin de liste*, or general ticket). The ministry retaliated by removing him from the active list of the army, whereupon Boulanger proclaimed himself a Revisionist and demanded that the constitution be overhauled. For the moment it looked as though he might accomplish what Hitler did in Germany, forty years later, and become dictator of France, for he managed to stampede the electorate in one department after another and get himself elected by large majorities. Whenever a vacancy occurred in the Chamber he would forthwith resign his seat and become a candidate, always with the same result. Early in 1889 he was triumphantly elected by the Department of the Seine, in which Paris is located, and then challenged the ministry to hold a general election.

His collapse and end. The victorious march of this “man on horseback” greatly alarmed all the moderate party groups and they took drastic steps to deal with it. They abolished the plan of election-at-large and restored the district system, with a provision that no one might become a candidate in more than a single district. This put an end to the general’s unbroken series of victories at the polls, but it would hardly have availed to crush his crusade had it not been for Boulanger’s own indiscretions and errors of judgment. By saying and doing foolish things he began to lose his hold on the populace, and his star went into its decline as rapidly as it had risen. The ministry, taking heart at the turn of the tide, tried to hale him before the Senate for impeachment. But *le brave général* did not wait to face his accusers; he fled to Belgium where he dealt with his own hand a final blow to the agitation by committing suicide in 1891. Nevertheless this sawdust Caesar gave the republic a scare while he lasted. Incidentally his collapse, and the manner of it, discredited the extremists at both ends of the scale and gave the moderates a lift.

(c) The Panama Canal muddle. The third stormy petrel of French poli-

tics during the closing decades of the nineteenth century was Ferdinand de Lesseps, the promoter who planned and built the Suez Canal. Having finished this great waterway to the Orient, he sighed for a new world to conquer. So De Lesseps promoted a company to construct a sea-level canal across the isthmus of Panama. Then ensued an orgy of frenzied finance. Shares in the new company were eagerly bought by thousands of Frenchmen, but much of the money was wasted before any real progress in digging the canal had been accomplished. When rumors of this mismanagement began to be noised about, the officials of the company attempted to hush them up by subsidizing newspapers and bribing members of parliament. To no avail, however, for the whole enterprise went bankrupt, and although strenuous attempts were made to re-finance it they proved abortive.

Its effect on the Government. Thereupon the shareholders demanded an investigation, and the government unwisely tried to conceal the true state of affairs; but a probe could not be avoided and in the end a sordid story of official corruption was laid bare. The evidence connecting senators and deputies with this corruption was not altogether conclusive, but innuendo made up for what was lacking in testimony, as has often been the case in French public life. At any rate, various leading statesmen in both the Moderate Republican and the Radical groups found themselves under a cloud. Public confidence in the integrity of more than one party group was badly shaken. Once again there was an opportunity for the extremists of the Right to strengthen themselves and they took full advantage of it.

(d) The Dreyfus Case (1894). Even before the odor of this scandal had been blown away, one of even greater capacity to stir the emotions of Frenchmen began to loom on the horizon. This was the Dreyfus case, which carried its echoes around the world during the closing years of the nineteenth century. Captain Alfred Dreyfus, an officer in the army, was put on trial and convicted by court-martial in 1894 for having sold French military secrets to Germany. Dreyfus was a Jew, born in Alsace, a member of the French general staff, but unpopular with his fellow officers. His conviction and sentence to exile on Devil's Island (off the north coast of South America) did not attract much attention at the moment, but presently rumors of gross injustice began to be circulated and eventually Emile Zola, the novelist, came forward with the definite charge that Dreyfus had been "framed" and railroaded to penal servitude in order that suspicion might be diverted from some non-Jewish officers who were the real culprits. This accusation, coming from so conspicuous a source, naturally created a great public commotion, and before long the Dreyfus case, with its anti-Semitic implications, was convulsing France from the Channel to the Mediterranean.

Dreyfusards and anti-Dreyfusards. There were charges and counter-charges, investigations and interpellations, hearings and rehearings. The whole country discarded party lines and split itself into *Dreyfusards* and *anti-Dreyfusards*, the former including Jews, the intelligentsia, the Socialists, the Radicals, and many Moderate Republicans. On the other side were most of the clergy, the army officers, the jingoes, the Jew-baiters of all varieties, the conservatives, and the monarchists. The anti-Dreyfusards in many cases were not at all concerned with Dreyfus' guilt or innocence but saw the controversy as an attack upon the army high command which they felt would shake public confidence in all authority. They rallied blindly to the defense of the general staff as once they might have done around the king. On the other side were the antiauthoritarians, the liberals, the writers and artists who saw in Dreyfus not only an innocent victim of *étatisme* and prejudice but an excuse to attack their antirepublican foes. The controversy concerned far more than the fate of the unfortunate captain, and as it passed through its various stages it toppled ministries, wrecked political ambitions by the score, and had something to do with causing one president to resign. In the end Dreyfus was retried by court-martial and again convicted, but the President of the Republic, on the advice of the ministry, granted him a pardon. Later the highest civil court in France (the Court of Cassation) annulled the verdict of the court-martial, whereupon Dreyfus was reinstated in the army, promoted, and given membership in the Legion of Honor. He served as a colonel during the First World War and died a few years later.

Effect of the case on French politics. The outcome of the Dreyfus affair put the shoe on the other foot. It discredited the extremists of the Right. Likewise it welded the Republican Left and the Socialists into a bloc which remained intact for many years. Someone ought to write a book on these four horsemen of the *fin de siècle* era in French politics. It is hardly proper that biographical volumes should be restricted to men of success and achievement, alone. The "troublers in Israel" should have their day in court on the printed page, for their careers are often most instructive. Wilson, Boulanger, De Lesseps, and Dreyfus—a biography of these four would be a history of party politics in France during the last fifteen years of the nineteenth century.⁶

With the arrival of the twentieth century, France appeared to be ready for a rest from political scandals. And a vacation from personalities was in fact enjoyed for a time while the country wrestled with the question of separating church and state, an issue which will be discussed a little later. Then, in 1914, came the First World War, followed by the peace negotiations and reconstruc-

⁶ Interesting chapters on Boulanger, Panama, and the "Dreyfus Revolution" are included in Jacques Bainville, *The French Republic, 1870-1935* (London 1936), written from the standpoint of a conservative royalist.

tion, with problems which absorbed the nation's entire energies. But with the return to something like normal conditions, the interest of the French electorate in political scandals were resumed, and this time the Stavisky case provided the material.

(e) **The Stavisky case (1933).** Stavisky was a Russian by birth, but while he was still a small boy his family emigrated to France. He himself became a naturalized Frenchman, a Roman Catholic, and also, unfortunately, a rather shady financier with dealings mainly among the higher ranks of the underworld. The crowning achievement of Stavisky's meteoric career as a practitioner in the domain of high finance was the Bayonne pawnshop affair. It should be explained parenthetically that in France the pawnshops are semi-official institutions. At any rate, Stavisky gained control of the establishment in Bayonne, issued worthless bonds to the amount of something like 200,000,000 francs, got a member of the ministry to suggest their purchase by large investors such as insurance companies, and succeeded in putting over the biggest swindle that France had known since Panama days. When the realities of the situation were disclosed, Stavisky committed suicide (according to the official version) but millions of Frenchmen believed that he had been put out of the way because he might implicate too many persons in high places if brought to trial. So the affair was brought up for discussion in parliament, where it created a turmoil and set Paris a-rioting. Then it upset the ministry (1933) which was chiefly Radical Socialist and a minor member of which was involved in the scandal. This strengthened the popularity of the groups on the extreme Right which had been mainly instrumental in uncovering the frauds.⁷ Various monarchist and fascist groups now took heart, organizing themselves into the *Croix de Feu*, the *Camelots du Roy*, and other reactionary bodies which harped on the theme of republican corruption.

THE CLERICAL ISSUE

The conflict of church and state. Religion, when mixed with politics, is a disturbing factor in party alignments. The people of the United States had that fact brought home to them in the Hoover-Smith presidential campaign of 1928. But in France the issue of church and state is an age-old one; it goes back to the days of Guelfs and Ghibellines, Ultramontanes and Gallicans. During the nineteenth century it had come to the front at various times, splitting the country into clerical and anticlerical camps, but not until about fifty years ago did it become an issue of paramount importance in French politics.

⁷ For an interesting account of the whole episode, see Alexander Werth, *France in Ferment* (New York, 1934), chaps. iii-v.

Its origin and earliest stages. Before the Revolution of 1789 the Catholic Church was the established church in France; no other was recognized by the government. And the established church was very rich, having acquired great areas of land from which handsome revenues were derived, but which paid virtually no taxes. One-seventh of all the lands in the kingdom, it was said, had passed "into the dead hand" of the church during the old régime. Naturally the revolutionists looked upon this opulent institution as a fair target for their confiscatory decrees. It was rich; its clergy formed a privileged order; it was part of the old Bourbon dispensation; its prelates were often members of the titled aristocracy. During the turmoils, therefore, the revolutionary authorities set upon the church and confiscated all its lands. Then they took the clergy from under the control of the Pope and made them subject to the civil government. Religion was compelled to bow to Revolution, as in Russia after 1917.

The Concordat of 1801. When Napoleon Bonaparte assumed the reins of authority, however, even though he himself was an unbeliever, he realized the necessity of restoring religion to its proper place in a well-organized state, and he was also desirous of establishing amicable relations with the Vatican. So he concluded with the Papacy an agreement known as the Concordat (1801). This treaty re-established the Catholic Church in France but could not give back the confiscated lands, because these had been divided up among thousands of peasantry. It was arranged, however, that the clergy should be recognized as public officials and paid by the government. The priests were to be appointed by the bishops and the bishops appointed by the civil authorities but confirmed by the Pope. This Concordat of 1801 determined the relations of church and state in France for more than 100 years.

Some of its effects. But a close association of church and state has more defects than advantages, from both sides. Inasmuch as the bishops and priests were public officials, the politicians became their paymasters. It was inevitable, therefore, that the church should be drawn into politics as a measure of self-protection. That, at any rate, is what happened. And it also happened that most of the clergy became allies of the monarchists and other party groups of the Right. Some of them were behind Boulanger during the eighties, and most of them were ranged with the anti-Dreyfusards during the nineties. These misalliances greatly angered the Radicals who kept chanting their slogan: "*Le cléricalisme—voilà l'ennemi!*" The anticlericals had two objectives in view: first, to liberate the schools from the influence of the clergy and thus to ensure that the children of France would not acquire any "unrepublican ideals"; second, to relieve the public budget from the burden of paying the salaries of the clergy.

The Radical drive against clericalism (1900-1906). At the beginning of the twentieth century, the Radical groups, as it happened, came into power, and they were not long in forcing their anticlerical program to the front. Their first move was to order the enforcement of various laws relating to religious associations which had long been honored in the breach. "There are too many monks in French politics," said the prime minister as he ordered these laws to be rigidly enforced.⁸

The most active political orders were the Jesuits and the Assumptionists. The latter published an influential weekly, *La Croix*, which was highly political. It also sponsored a political action committee to work for Right deputies and against Freemasons, Jews, and republicans generally. It even organized an intelligence corps to collect all possible information about the lives, public and private, of as many politicians as possible.

The government was also worried about the growing economic power of the orders. Many were engaged in lucrative business enterprises in which they enjoyed the advantage of an industrious, disciplined labor force which received subsistence only. The orders were particularly active in the manufacture of liqueurs, perfumes, and chocolates. The wealth thus acquired, it was feared, might be used as an antirepublican political war chest.

Still more alarming was the fact that more French children were being educated in the Catholic than in the public schools. The pupils receiving an education at the hands of the clergy included almost all the children of wealthy, titled, and military families; those who might be expected to fill important state offices in the future, and who, during their formative years, were being given antirepublican indoctrination.

In addition to the law of 1901, the government forbade all religious orders from giving secular instruction. All this stirred up a hornet's nest, of course, but the ministry did not retreat. Altogether there were 753 orders that needed authorization to remain, 147 male orders and 606 female. About two-thirds of the orders of nuns and sixty-three of the male congregations applied for recognition. All of the nuns' requests were refused, but five male orders were permitted to stay in France, including the Trappists and two missionary orders. The monks of the Grande Chartreuse went to Spain; others emigrated to Belgium, England, and the United States.

The breach with Rome (1904) and the Separation Law (1905). As the conflict became more bitter the government broke off diplomatic relations with the Vatican (1904). Then it proceeded to abrogate the Concordat, in

⁸ Actually the law of July 2, 1901, distinguished various kinds of associations. Those in which a member was under a vow of obedience to his superiors and was subject to disciplinary action would have to be approved by special law; new ones would have to submit to governmental inspection and be liable to dissolution by decree.

other words, to cut the church and state asunder. A Law of Separation was drafted and enacted in 1905. This law proclaimed the gradual withdrawal of the government from all financial obligations to the church and set it free to manage its own affairs, including the appointment of bishops, without civil interference. The last-mentioned provision of the law would have been hailed with satisfaction by the clericals had it not been accompanied by the stipulation that the church would get no more money from the public treasury. The Separation Law also provided that all cathedrals, churches, and other ecclesiastical buildings should belong to the government, but the congregations might use them free of charge.

The outcome of the conflict. The general election of 1906 was fought on the issue of clerical privileges and the radical groups which had supported the Separation Law proved victorious at the polls. The same bloc of leftist groups, with various shiftings, continued to dominate the Chamber down to the eve of the First World War and disclosed no substantial weakening in its anticlerical attitude during that time. But when the great emergency came upon France in 1914 there was an immediate adjournment of party animosities, and a coalition of all the leading party groups was hastily formed under the name of the Sacred Union. This coalition was naturally less hostile to clericalism than the Radical ministries had been and the same was even more true of the national bloc which succeeded this war coalition in 1919. While the national bloc remained in power, from 1919 to 1924, therefore, some progress in the restoration of cordial relations between the church and the state was made. France and the Vatican resumed diplomatic relations in 1921—by executive order, not by law. But the ministry during these years did not venture to repeal or modify the laws relating to the church, although it somewhat relaxed their enforcement.⁹

Why the separation of church and state in a Catholic country. France is a Catholic country. Americans may wonder, then, why the French people should consistently have backed governments which stood for the separation of church and state. The truth is that the middle-class Frenchman has always felt himself to be the heir of the Revolution as well as of the church. He felt that he could keep his religion quite separate from his politics and he resented the antirepublican attitudes of some of the clergy. Some Frenchmen wear their Catholicism lightly, as do the numerous Catholics in the Communist party. Other non-Catholics of conservative views have supported the church, as did the celebrated writer, Maurice Barrès, who said in the Chamber of Deputies. "I am an atheist but I defend the Catholic Church because it is in harmony

⁹ For example, nuns were permitted to conduct schools provided they did not wear the habit of their order.

with the national aspirations of France." The Radicals at no time had any intention of destroying the church, but they were determined that it should confine its influence to religious affairs. Between the World Wars this issue was the main cause of political division in many parts of France. In rural areas the villagers tended to look for political leadership to the local aristocracy and the parish priest or else to the anticlericals, often led by the local school-teacher.¹⁰

A moribund issue. Even though Pétain had some clerical support, the record of the great majority of the clergy during the Vichy interlude and in the resistance movement proved that French priests had not only accepted the republic but were genuinely loyal to democratic ideals. Before the war, in fact, the Pope had excommunicated the bitterly antirepublican editors of the *Action française* and the rowdies of the *Camelots du Roy*. He did this upon the advice of the French bishops. Reactionary, antirepublican Catholics are now greatly outnumbered by the semisocialists of the Popular Republican Movement with its Catholic leadership. The Catholic youth organizations, the Catholic trades unions, and many of the younger priests are socialist in their political views. This means that the former Catholic-conservative versus Radical-liberal-Socialist combination has been shattered. Its memory lives on only in the issue of aid to private (Catholic) schools. The old anticlerical forces regrouped themselves in October, 1951, when the Barrangé law was debated and passed, providing for indirect state financial aid to private schools. But the old spirit was lacking. A number of Radicals voted for the measure.¹¹ Of the parties with a nineteenth-century tradition of anticlericalism, only the Socialists were firmly united against the bill.

Significance of these controversies. All of these *causes célèbres* make plain a basic fact of French politics. As a political entity the French people have not been truly united since the Revolution of 1789. A Stavisky scandal is the occasion, not for the trial of a few malefactors, not merely for the disgrace of the party, some of whose members were involved, but for a bitter and violent attack upon the republic itself. This same lack of unity was behind the "failure of nerve" that contributed largely to the military collapse of the French armies. It underlies the instability of French cabinets. Formerly the forces of "order" and reaction grouped themselves around the church, while the forces of "movement" and radical reform looked to the Declaration of the Rights of Man and the leaders of the Revolution for their inspiration. Meanwhile a

¹⁰ The schoolmaster was usually of the political *avant-garde* and often a deist or an atheist. A highly entertaining if ribald story of political and social controversy in a French village may be read in a novel by G. Chevallier, *The Scandals of Clochemerle* (New York, 1937).

¹¹ On many issues the Radicals find themselves to the right of the Catholic MRP, even though they insist for reasons of tradition on sitting next to the Socialist delegation in the Assembly.

large part of the church has become liberal or even radical in its social views, while the Radicals have found themselves becoming quite out of date with their "bourgeois individualism." The new forces of "movement" seem to remain grouped around the far Left, represented by the Communist party, and those of "order" around the far Right, represented by De Gaulle's Rally of the French People.

The rise of socialism. During the later years of the nineteenth century and the early part of the twentieth, the French Left had become more and more attracted to one variety or another of socialism. Now that political democracy had been achieved, these radicals wanted to secure a greater measure of economic equality and the socialist programs seemed to indicate how this ideal could be achieved. The early "utopian" Socialists, as Marx called them derisively, were never politically important but had to content themselves with small, fanatical bands of followers. Suppressed under the Second Empire, their revolutionary attempt at the close of the Franco-Prussian War was violently crushed by Thiérs. Socialism did not become respectable until the Third Republic was well established. Even when public acceptance had been achieved, the Socialists were unable to attain internal cohesion but showed a tendency to split into rival groups. The great schism took place in 1920 when Socialists of several groups left to join the Third (Communist) International and become the nucleus of the French Communist party. As always, the Communists became the bitterest political enemies of their fellow Marxists of the Socialist party. But this situation changed abruptly when fear of the fascist movements that seemed to be sweeping Europe led the Comintern¹² to call for an alliance of the Communist parties with all other anti-fascist groups, however conservative they might be.

The Popular Front. Hence the Popular Front combination in France, including the Communist, Socialist, and even the small businessman's Radical Socialist party. This election alliance had no trouble in winning control of the Chamber and the premiership for the Socialist chief, Léon Blum. The French people were impelled to cast their votes for Popular Front candidates for two reasons: the economic depression which seemed to demand radical action by the government, and the frightening antics of the Right's "lunatic fringe," led by demagogues who precipitated minor riots every few days.¹³

¹² The Communist International, directing and coordinating organ of Communist parties throughout the world. See below, Chapter xli.

¹³ French fascist groups of this period (the nineteen-thirties) included: M. Taittinger's *La Jeunesse Patriote*, ex-Communist Jacques Doriot's anti-Semitic *Parti Populaire Français*, the wealthy perfume manufacturer M. Coty's *La Solidarité Française*, *Les Francistes*, based upon the French equivalent of Hitler's racism, the royalist *Camelots du Roy*, and possibly the largest and best publicized, Colonel de la Rocque's *Croix de Feu*, which started out as a group of decorated war veterans but included finally anyone who agreed with the Colonel's Napoleonic plans.

The Popular Front, however, represented an uneasy alliance. United against the Fascists, it found internal agreement hard to obtain on almost every other policy. Nevertheless, the Blum government made a brave attempt to improve the lot of worker and farmer—to some extent, unfortunately, at the expense of production which was low already by European standards. Another serious cause of disunity was the question of whether or not to aid the Spanish Republican government then engaged in a life-and-death civil war. Blum's insistence upon nonintervention, which actually helped Franco, not only infuriated his Communist supporters in the Chamber but alienated many others as well. In the end, Blum's financial difficulties brought the conservative wing of the Popular Front (the Radicals) to power in the Chamber, while, at the same time, the electorate was swinging in the other direction, toward the Communists. It was under such circumstances that war came, despite Daladier's abject repudiation of the French-Czech alliance at Munich.

The politics of Vichy. The attempt of the aged Marshal Pétain to set up an authoritarian French state to replace the Third Republic found no broad political support among the French people. At first the extreme conservatives accepted the new régime with satisfaction. It seemed to represent their ideal of an orderly, stable society based upon the family, the church, and a rigid class system—an ideal to be welcomed no less ardently for having been made possible by French military disaster.¹⁴ But even those who shared the Marshal's ideals were in time alienated by the excesses of Laval's Vichy militia and his frantic attempts to carry out the orders of his Nazi masters. More and more Frenchmen were driven into tacit opposition or into outright military resistance. In the end the Vichy government was no more than a false front propped up by German bayonets. The only active political life in France was that which went on within the *Résistance*. This was characterized by strong left-wing influence, both moderate and Communist.

FRENCH PARTIES TODAY

The party picture in the Fourth Republic differs from that of the Third in that large national parties dominate the scene today. In the elections of 1945 and 1946, the bulk of the votes went to the Communists, Socialists, and the new MRP (*Mouvement républicain populaire*). The Right had almost disappeared and the Center: the Radical Socialist party and the allied UDSR (*Union démocratique et socialiste de la Résistance*) had only 65 seats in 1946.

In 1951 a sharp swing to the right placed De Gaulle's RPF (*Rassemblement du Peuple français*) in first place with 118 deputies as compared with 5 in

¹⁴For an account of Vichy policies in the early and middle stages of the régime, see Pierre Tissier, *The Government of Vichy* (London, 1942).

1946. Next came the Socialists with 104, the Communists with 103, and the RGR (*Rassemblement des gauches républicaines*—Rally of the Republican Left), an alliance of Radicals and the UDSR, with 94 seats. The Independent and Moderate Republicans, a Right-Center group, won 99 places, while the second largest party in 1946, the MRP, dropped to 85.

Governments since 1946. It would serve little purpose here to recount in detail the successive governments and cabinet crises since the start of the Fourth Republic. By January, 1953, there had been thirteen changes of government since De Gaulle took office as prime minister in November, 1945. As in the Third Republic, these changes were often mere cabinet shuffles. To quote M. Treno, editor of the humorous weekly, *Le Canard Enchaîné*, "Our Government is a 'Rotary Club,' where from time to time the Ministers move from one chair to another. But they are always the same Ministers and it is always the same Government."¹⁵ An examination of the major parties, however, will serve to illuminate the forces at work in French politics and indicate why the centre of gravity tends to remain near the middle of the Assembly benches and to give greater influence to the Center than its voting strength would seem to justify.

The Socialist party. The old Socialist party, or to give its official name, *Section Française de l'Internationale Ouvrière* (SFIO), survived the war as a very important party with the same respected leader, Léon Blum. This party believes in gradualist socialism and is much like the British Labor party in its program. It depends for votes chiefly upon the lower-middle-income groups. The typical French Socialist today is a civil servant, a teacher, or a white-collar worker.

Unlike the British Labor party, the SFIO has never been able to count upon the unified support of organized labor. Even before the war, the General Confederation of Labor (CGT), roughly equivalent to our AFL, was not solidly Socialist. As noted later, it emerged from the war under Communist control. To be sure, the veteran Socialist labor leader, Léon Jouhaux, formed a non-Communist labor organization called the CGT-*Force ouvrière* or Labor Force—and managed to win some unions away from the CGT. But the latter remains by far the biggest group, with membership totaling a million or so more members than all other unions put together.

The party's greatest problem is, as it has always been, the maintenance of internal cohesion. Every Socialist congress and national council meeting is concerned with the same problem: should the Socialists cooperate with non-Socialist governments or should they abstain? This question arises anew with

¹⁵ From his article, "Crisis in France—What Crisis?" *New York Times Magazine*, Jan. 18, 1953.

every cabinet crisis and the conditions of Socialist support have to be thrashed out again. Whatever the decision, it is sure to displease many party members.

In 1946 the Socialist party received almost 3,500,000 votes (17.9 per cent of the total cast), but in 1951 only about 2,740,000 (14.5 per cent). Nevertheless, thanks to the allied list system, they were given 104 seats in the Assembly, one more than they had had in 1946. There have been two Socialist premiers in the Fourth Republic: Léon Blum and Paul Ramadier. The first President of this Republic, Vincent Auriol, is also a Socialist.

The Communists. The French Communist party emerged from the war with a magnificent resistance record which led most people to forget its defeatism during the period of the Hitler-Stalin pact.¹⁶ The Communists at once set out to gain wide support among the voters and to this end adopted a moderate tone. The units they controlled in the "*Fifi*"—the *Forces Françaises de l'Intérieur*—gave up their arms when ordered to do so by De Gaulle, even though they grumbled about it. Then they set about a mass recruitment campaign. They even addressed polite invitations to middle-class housewives. In this appeal they were not conspicuously successful, but they had managed to emerge from the war in control of the great General Confederation of Labor (CGT). By 1946 it is said that they occupied more than three-quarters of the highest posts in this organization. They soon had almost 1,000,000 party members and could count on a voting power of about 5,000,000.

Like all Communist parties, that of France has rigid discipline and complete loyalty to the Cominform "line."¹⁷ Its instant disapproval of the Marshall Plan was proof, if any were needed, that it could not be included in future French governments or be expected to compromise in a way contrary to Kremlin policy. The most prominent Communist leader is Maurice Thorez, who spent most of the war period in the USSR, and who represents France in the Cominform. The next in importance is Jacques Duclos, chief parliamentary leader. Since May, 1947, the Communists have opposed each successive government. They have provoked disorder in the Assembly several times, the most notable instance occurring in March, 1950, over a bill to curb sabotage and demoralization in the army. There were about ten hours of "tumult," to use the official phrase. This meant actual fist fights, the exchange of epithets, and the forcible occupation of the tribune by several Communist deputies. The president of the Assembly (M. Herriot) had to call in the Republican Guards

¹⁶ Their great prestige in the resistance was due to several factors in addition to their actual accomplishments; the fact that they alone organized resistance units on a definite partisan basis; that Vichy and the Gestapo tended to refer to all resistants as "Communists"; and finally to their own excellent publicity system.

¹⁷ It has been remarked that their response to speeches in the Assembly either favorable or otherwise is so unanimous and concerted as to suggest the presence of an invisible cheer leader.

to restore order. Several deputies were injured and two were suspended for twenty days.

It must not be supposed that this represents usual Communist tactics. The party contains many brilliant debaters and the unquestionably low living standard of the French workman provides plenty of telling arguments.

Communist voting strength has been dropping slowly but steadily, but the Communist party still remains the largest vote-getter of all. It polled almost 5,500,000 votes in 1946 (28.6 per cent of the total) and over 5,000,000 in 1951 (26.5 per cent). Under the new electoral law it won only 103 seats in 1951 as compared with 187 in 1946. Internal difficulties and the expulsion of two of its most important figures, André Marty and Charles Tillon, in December, 1952, may cause further defections.

The MRP. The Popular Republican Movement was founded by resistance veterans who had turned against all the old parties. They were admirers of De Gaulle and Catholics of Christian Socialist views. This new party was the obvious catch-all for non-Marxists who were dissatisfied with the old Center and Right. Furthermore, the leadership was energetic and the party organization disciplined and effective. The fact that the leaders were Catholic attracted many of the new women voters. A number of the resistance groups soon merged with it. Although originally claiming De Gaulle as its spiritual if tacit leader, its philosophy has been that of a sort of "New Deal" party. It has repudiated both Marxism and old-fashioned capitalism and has warmly espoused the welfare state. It has profited considerably by the benevolence of many of the Catholic clergy and the Catholic youth organizations. As one might expect, it formed the core of the Third Force, along with the Socialist party. Although General de Gaulle's RPF, described below, made serious inroads upon its membership, it remains an important party.

In detail, its program includes more industrial democracy (participation by workers in management); benefits for the family (as the primary social unit); state support for all schools, including private (Catholic) schools; colonial reforms within the framework of the French Union; strong international organization; acceptance of NATO but strong opposition to aggressive acts against the Soviet Union. Its leaders include Georges Bidault, Pierre-Henri Teitgen, André Colin, François Gay, Robert Schuman (foreign minister for four and a half years under successive governments), Maurice Schumann, and François de Menthon.

As a party it is heartily disliked by the conservatives who feel that its members, as good Catholics, have no business flirting with socialist ideas. It annoys the Radicals too, by taking a position to their left on many issues. Now that its ultranationalist members have deserted it for the RPF, it is a

rival of the Center and moderate Right parties in its quest for votes. As noted earlier, it had enormous popular appeal in 1946, polling over 5,000,000 votes and winning 166 seats. Between 1946 and 1951 it lost over half its voting strength, mainly to De Gaulle's RPF, and despite the allied lists, won only 85 seats in the latter year. Its loyal core of militant members shrank from some 400,000 in 1949 to about 100,000 in 1951.

The Rally of the Republican Left. The greatly reduced Radical Socialist party joined forces for election purposes with one of the largest of the resistance groups: the Democratic and Socialist Resistance Union (UDSR). Under the name of Rally of the Republican Left (RGR) these parties have presented combined lists at elections ever since the adopting of the new constitution. They retain their party identity in parliament, however, although they occupy adjoining benches and usually vote together. They have usually supported Third Force governments when not too far to the left in economic measures. The relative unpopularity of the once powerful Radical Socialist party is one of the most striking features of postwar party politics. The reasons are not far to seek; it was the party *par excellence* of the discredited Third Republic; it was in power at the moment of the shameful capitulation to Laval and Pétain; some of its prominent members had a poor resistance record,¹⁸ and it had inherited the chief blame for the prewar financial scandals.

Successive Third and Fourth Force governments have helped to give prominence to a number of RGR leaders, but the group has suffered a steady if slow decline in its electoral appeal. Its repudiation of De Gaulle may have cost it votes. Another reason may be that it does not stand for any vital issue today. Not progressive enough for the new Left, it is too liberal and compromising for the new Right. Its real role is to serve as the link between the right and left wings of the government coalition. In doing so it has provided premiers and cabinet ministers sufficiently acceptable to both wings. In 1946 it received a few more than 2,381,000 votes and in 1951, 2,194,000. It benefited substantially from the allied list system and increased its Assembly representation from sixty-five to ninety-four.

Leading Radicals who have been premier include: René Mayer, Henri Queuille, André Marie, Edgar Faure, and René Pleven (UDSR). Its octogenarian veteran, Edouard Herriot, was president of the National Assembly in 1953, a post he had held continuously since 1947. In the Mayer cabinet, formed in January, 1953, the Radicals held the premiership, vice premiership, and five other cabinet posts, and their RGR allies, the UDSR, held two.¹⁹

¹⁸ The record of others was impeccable; Herriot, for example.

¹⁹ The other parties represented were: MRP with six cabinet ministers, the Independent Republicans with five, Peasant Action, two, and the ex-Gaullist ARS, one.

The Moderate Right. The Moderate Right has shown increasing electoral strength since 1946, not only in the last general election of 1951 but in by-elections held since then. The parties of this segment of the Assembly were also beneficiaries of the allied list system and increased their representation from seventy-three deputies in 1946 to ninety-nine in 1951. Together with the MRP and RGR, they support Fourth Force governments.

The Independent Republicans are the strongest Moderate Right group. They are also the most liberal, and sometimes cooperated with Third Force premiers. Their best known leader is Paul Reynaud. Hardly a true party, as we would use the term, they have no national organization but nominate lists of conservative deputies at election time. Their neighbors include the *Action Paysanne* (AP), a conservative farmers' party, and the *Action Republicaine et Sociale* (ARS) of some thirty-two deputies who split away from the RPF because they wished to support the government contrary to RPF directives.

The RPF. It was soon evident from his speeches and his sharp attacks upon the new constitution that De Gaulle did not reciprocate the admiration the MRP had for him. In March, 1947, the general announced the formation of a *groupement*, the Rally of the French People (RPF). This was done with the avowed intention of securing a revised constitution. De Gaulle declared the RPF to be an interparty alliance rather than a new political party, but in fact it had all the usual party machinery and demanded primary loyalty from its adherents. Indeed, the instant hostility of the major parties and the refusal of party leaders to allow their members to join this "intergroup" practically forced the RPF to become a full-fledged party. As De Gaulle's own party, it soon attracted many voters of Center and Right. This was the case even though the general's political philosophy was far from clear and consistent. As interpreted by one of its chief spokesmen, the RPF stands for a strong president, chosen by a series of electoral colleges, who would be a kind of combination of the British prime minister and the American president. It also advocates a strong second chamber to be formed in part like Mussolini's Chamber of Corporations. Although the RPF could not be described as fascist, it displays some of the stigmata of fascism and might become fascist under certain circumstances.²⁰ It has been the most vigorously anti-Communist of any French party, and in the municipal elections of October, 1947, it had an astonishing success, receiving almost 40 per cent of the popular vote.²¹

Reasons for its success. The explosive rise of the RPF represented the sudden revival of the forces of "order," the traditional Right. Stunned by the

²⁰ See E. M. Earle (ed.), *Modern France* (Princeton, 1951).

²¹ Most of these votes came from Radicals, other Center voters, and from former supporters of the MRP.

collapse of Vichy, some of their leaders tainted by prewar fascist activities and others by Vichy collaborationism, French conservatives had been forced into political silence or into joining moderate parties whose only merit in their eyes was that these parties were anti-Communist. In De Gaulle they now had a leader of the highest national prestige and of unquestionable loyalty and integrity. His ideas appeared to be sufficiently authoritarian to attract extreme conservatives. Altogether he was for them the ideal leader able to unite extreme nationalists, conservatives, and reactionaries as no one else could hope to do. Such elements flocked to his banner with enthusiasm and the Right was back in political business again. After the 1947 municipal elections, seventy-two deputies of various parties promptly climbed onto the Gaullist bandwagon by organizing an RPF intergroup.

In the elections of 1951 the RPF got over 4,000,000 votes, placing it next to the Communists in popular appeal. The new electoral law had been directed against them almost as much as against the Communists, but they did better proportionately and even secured places on an allied list in rare cases. The RPF elected 118 deputies in 1951, the largest delegation of any party although still far short of a majority in the Assembly. A perennial problem of the French Right has been lax party discipline, and attempts to impose rigid control over the members' votes by General de Gaulle led to defections. As of January, 1953, only eighty-four deputies were still accepting the RPF whip.

The RPF "disbanded" May, 1953. Disgusted by electoral reverses and by his inability to control the votes in parliament of the RPF deputies, General de Gaulle announced on May 6, 1953, that henceforward the RPF delegation in the National Assembly would act as individuals without involving the party. The RPF would continue to serve in some unspecified way as a rallying point in the country for those wishing to change the régime. The former RPF deputies then chose the name "Republican Union for Social Action" for their parliamentary group but remained individual members of the RPF. When three of them accepted ministerial posts in the Laniel government in June, 1953, the general promptly expelled them from the RPF. While he will allow his followers to support the ministry with their votes in the National Assembly, he is adamant against any actual participation in a government formed under the present constitution.

The Third Force. The sudden success of the RPF in 1947 was very disquieting, not only to parties such as the MRP, which suffered corresponding losses, but to many moderates who feared the deep and growing division in country and Assembly between the extremes of Right and Left, with civil war a not impossible eventuality. Inspired by such fears, Léon Blum moved at once to organize an intergroup of all anti-Communist parties who were also

opposed to the authoritarian ideas of General de Gaulle. This movement was named the Third Force and included the Socialists, the RGR, the MRP, and a few Moderate Right elements. It could count upon the electoral support of the Catholic trades unions and the *Force Ouvrière*.

Third Force governments were likely to be of short duration. They were backed by groups in serious disagreement on many issues and united, as was the old Popular Front, only in what they opposed. Characteristically, they would unite in the Assembly to confirm a prime minister and cabinet and then proceed to disintegrate as the dividing issues came up for decision. The government would then resign and another premier would reconstruct a cabinet composed largely of the old ministers. The pattern of disintegration would then repeat itself.

The Fourth Force. The Third Force was badly shaken by the 1951 elections, which gave increased representation to the Center and Moderate Right. Its demise was signaled by the resignation from the Pinay government in March, 1952, of the Socialist ministers. M. Pinay turned at once to the Moderate Right for replacements and the new coalition was promptly nicknamed the "Fourth Force." Pinay's successor, René Mayer, had substantially the same support, but had to lean still further upon the Right. He could not be sure of success without some Gaullist votes. These were forthcoming when he compromised on the European army treaty, sacrificing the architect of France's postwar foreign policy, Robert Schuman.²² The RPF supported the government upon this point but refused cabinet participation in order to remain free to vote against it at any time. The governments of the Fourth Force cannot count upon the solid support of the parties that approved their formation any more than could their predecessors of the Third Force. One factor of safety is that when Socialist opposition is complete, Gaullist support is probable, and vice versa.

Political balance in Assembly and electorate. Cabinet crises nowadays are brought about by either economic or foreign policy issues. On economic matters the division between Right and Left is fairly clear, but the foreign policy issues ("neutralism" or an independent French policy or all-out support of the West) cut across party lines.

The relative strength of Right and Left among the electorate has been fairly stable for many years. Even in 1951 the Left still had a majority of the popular vote.²³ But because of Communist intransigence no all-Left govern-

²² Schuman was replaced by Georges Bidault of the same party, (MRP). Bidault was not expected to bring about any reversal in the direction of foreign policy, but Schuman had to be dropped to satisfy public opinion, which regarded him as too subservient to the United States.

²³ Defining the Left as consisting of the two Marxist parties and the MRP, it received almost 14,000,000 out of 19,000,000 votes in 1946 and over 10,000,000 out of 19,000,000 in 1951.

VOTES	1946		1951		DIFFERENCE
	<i>Votes</i>	<i>Percentage</i>	<i>Votes</i>	<i>Percentage</i>	
Communists	5,489,288	28.6	5,038,587	26.5	— 450,701
Socialists	3,431,954	17.9	2,764,210	14.5	— 667,744
MRP	5,058,307	26.4	2,353,544	12.3	— 2,704,763
RGR	2,381,384	12.4	2,194,213	11.5	— 187,171
Independents & Moderates	2,465,526	12.8	2,496,570	13.1	+ 31,044
RPF	313,635*	1.6	4,134,885	21.7	+ 3,821,250
Miscellaneous	62,976	0.3			
	19,203,070		18,982,009		

*Votes cast for Gaullist Union lists.

SEATS	1946		1951	
	<i>Deputies</i>	<i>Percentage</i>	<i>Deputies</i>	<i>Percentage</i>
Communists	187	30.5	103	16.5
Socialists	103	16.6	104	16.6
MRP	166	26.9	85	13.6
RGR	65	10.5	94	15.0
Independents & Moderates	73	11.8	99	15.7
RPF	5	0.8	118	18.8
Miscellaneous Overseas parties	18	2.9	24	3.8
	617		627	

A comparison of the popular vote and seats obtained by the parties: elections of 1946 and 1951.
(Tables prepared by the French Embassy,
Press and Information Service.)

In detail, party strength as of January, 1953, was as follows:

Communist party 96 plus 4 Progressives (not affiliated but usually voting with PC)

Socialist party 104 plus one affiliate.

RGR { UDSR 16 plus 7 affiliates.
Radical Socialist party 67 plus 8 affiliates.

MRP 85 plus 4 affiliates.

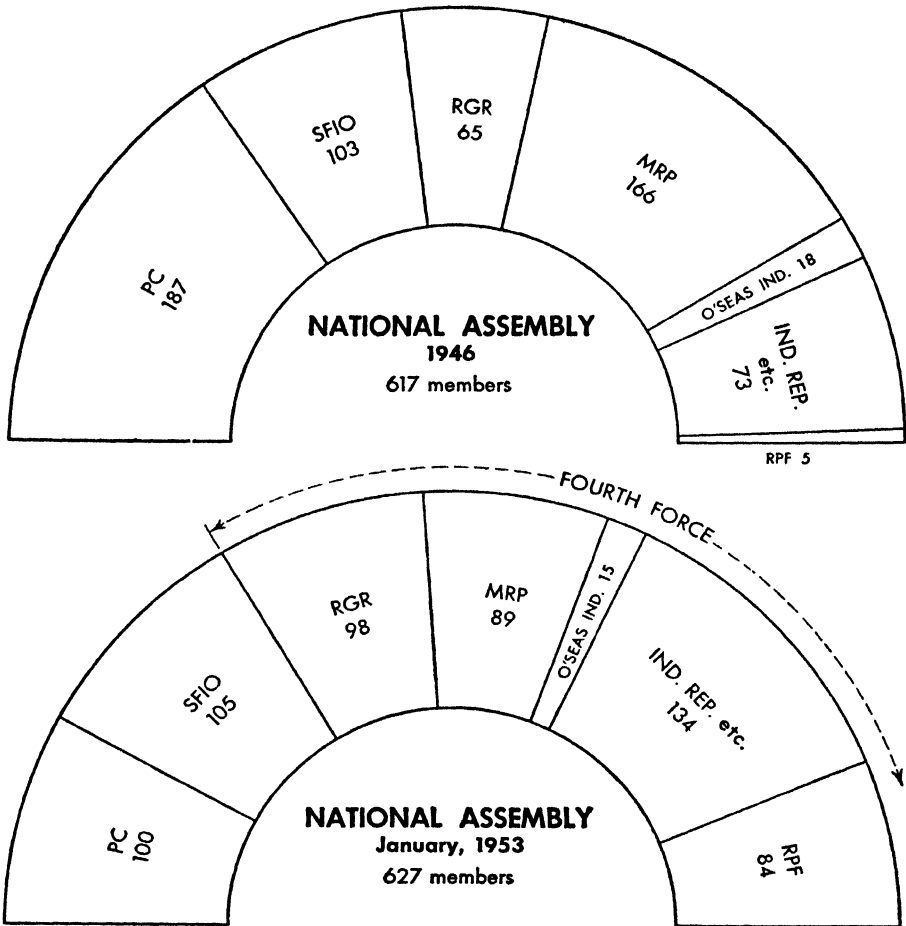
Overseas parties 15

Moderate Right { Independent Republicans 47 plus 8 affiliates.
Peasant Action 41 plus 6 affiliates.
Republican and Social Action (ARS) 30 plus 2 affiliates.

RPF : 84

noninscrit (unaffiliated) 2*

*One of these was André Marty, recently expelled by the Communist party; the other, an African deputy.



ment is possible. This throws the balance of power in the Assembly considerably to the right of its location in the electorate. The numerically weak Center is called upon to lead the governments. Small wonder that its combinations are of short duration. A constitutional change providing for easier dissolution at cabinet request, as proposed by M. Mayer in January, 1953, would not change the basic imbalance. The problem is political, not constitutional, and only a political change can solve it. Indeed in 1953 there was some evidence of a voting swing toward the Center and Moderate Right. If this continues and the extremist parties lose electoral strength, the Assembly will reflect the electorate more precisely, and succeeding governments will have a broader and firmer base upon which to rely. In such a case there would be no reason to fear any dangerous increase in cabinet instability.

PARTY ORGANIZATION

Much of what was said about the weakness of party discipline and the lack of electoral basis for parliamentary groups in the Third Republic does not apply to the great French parties today. Of course there are still a few deputies who are not firmly affiliated with any groups.²⁴ At any time, moreover, a group of deputies may decide abruptly to form a new group or intergroup, having some weight in the Assembly, perhaps, but with no electoral roots at all.²⁵

Nevertheless, the great parties are not unlike parties as we understand them in the United States. The chief difference, perhaps, is the more institutionalized and continuous control exercised by the party organizations over their deputies. The structure of the MRP, now to be examined, may be taken as typical of the major parties.

Local sections of the MRP. Among the voters, local sections are formed of ten or more members. These elect officers and meet to discuss issues and pass resolutions. They also, as party "militants," disseminate party propaganda and try to convert their neighbors.

Departmental federations. The departmental federation is the principal "ground-roots" organ of the party. Each has 100 or more members representing the local sections. From time to time it sponsors mass meetings of all militants in the department to debate issues and pass resolutions. Its members elect a committee which appoints the *bureau* (executive committee). Nominations and elections are by secret ballot. The federation controls the nomination of deputies to the National Assembly, subject to the approval of the central executive committee. It has much to do also with party propaganda, using specialized teams for this.

National congress. The national congress is the party's "sovereign" body. Any party member may attend its meetings, but voting is reserved for delegates of the departmental federations elected by secret ballot. The number of delegates from each federation is decided by rules intended to favor the smaller federations so that the party may not become too regional. The congress elects the top officers, president and secretary-general, and determines the party program for the ensuing year. In certain respects it is like our national party conventions.

The national committee. For making decisions between congresses there is a national committee which meets every two months. It consists of the

²⁴ In the 1946 Assembly there were nine *non-inscrits* and fifteen others who declared themselves "associated" with various groups though not members of any. As the chart shows, there were only two completely unaffiliated members and thirty-six "associated" members in 1953.

²⁵ For example, in January, 1951, three members of the MRP resigned from that party to form the Independent Socialist left, described as a "movement" rather than a party and taking a position to the left of the MRP. This was done as a countermove to the action of the MRP members who had joined the RPF.

parliamentary members, who make up about half the committee, and representatives of the federations, special party workers, and a few militants who make up the other half. Because sudden decisions, such as the party's attitude toward a new government, for instance, must often be taken between congresses, this committee plays an important part. Generally speaking it has tended to accept the leadership of its parliamentary members.

The executive committee. The national committee elects an executive committee of about fifty members from its own membership. This always contains all party members who are ministers, some dozen other deputies, and about eighteen representatives of the federations. This arrangement leaves control with the parliamentary group.

Other organs. The secretary-general heads a secretariat which performs the administrative and clerical functions of such a body and also keeps an eye upon the federations to see that they do not go astray on party policies. If they do, the matter is drawn to the attention of the executive or national committee. There are also specialized propaganda teams at the national level to assist and direct the federation teams and research sections to work on party problems.

Other parties. The above description applies, with certain amendments, to the other national parties. The Socialists argue hotly over every question at each stage of their party organization. Their national committee is composed of federation representatives only and often enough it is completely at odds with the decisions of the parliamentary members. This is due, in part at least, to the very mixed character of the SFIO, from right-wing humanitarians to left-wing orthodox Marxists. Their steering committee, the equivalent of a national executive committee, has a two-thirds majority of nonparliamentary members, and its decisions are not always regarded as binding by the Socialist deputies. The Radical Socialist party, too, has never been able to assure party discipline and its deputies are prone to split their votes in the Assembly.

Communist organization. The *Parti Communiste*, on the other hand, displays the monolithic qualities of such parties everywhere. Its central committee is not of great importance and seldom meets. The chief directing organ is the political bureau which sets the party "line" for members in and out of parliament. Other party leaders must sometimes cast envious eyes at M. Thorez when they see the iron discipline to which his deputies submit. Needless to say, the departmental federations of the Communist party are not free to make nominations without clearance from the "politburo."

The party press. Most major parties manage to have one or more metropolitan newspapers to express their views as well as provincial organs. The

French equivalent of *The Daily Worker* is *L'Humanité*. There was also a Communist evening paper, *Ce Soir*, which was discontinued early in 1953 because of falling circulation. But there is another unofficial daily, *Libération*, and a long list of weeklies and monthlies devoted to almost the entire range of special interests: sport, theatre, and so forth. Many of these are unofficial but reflect faithfully the party "line." It is possible for a French Communist to read a wide variety of periodicals without being exposed to heretical opinion. No other French party has anything approaching such a press.

The official Socialist organ is the daily, *Le Populaire*, long edited by Léon Blum. The Popular Republican Movement had a spokesman in *L'Aube*, but with the loss of membership in this party, *L'Aube* closed down in 1951. The MRP now has no metropolitan daily but still has several provincial papers including *Ouest-France* (Rennes) and *La Liberté du Centre* (Limoges). *L'Aurore*, edited by Paul Bastid, comes closest to being a Radical Socialist organ, while the chief UDSR paper is a provincial daily, René Pleven's *Le Petit Bleu des Côtes du Nord*. General de Gaulle has an official organ in the weekly, *Le Rassemblement*. The daily *Paris Presse*, which carries the column of the celebrated "Pertinax," is often Gaullist in its views. *Témoignage Chrétien* is a liberal Catholic paper, while the conservative clerical viewpoint is reflected in *La Croix*.

Most French newspapers carry little advertising and can seldom afford to exist for long without financial support beyond their earnings. This is a compelling reason why they tend to be journals of opinion with much coloration of the news and also why they tend to disappear after a short time. Almost none of the prewar newspapers is still in existence and most of the postwar papers have vanished from the *kiosques*. Exceptions are *Combat*, a former resistance paper appealing to the intelligentsia, and *Franc-Tireur*, another resistance paper of leftist views. *Libération*, also an ex-resistance paper, is the organ of the tiny Progressive party which is firmly allied to the Communists.

The famous conservative daily, *Le Temps*, which was generally regarded as expressing the views of big business and the *Comité des Forges*, has gone. Its place as a large (by European standards) and well-documented newspaper has been taken by *Le Monde*, which is independent and liberal rather than conservative in tone. The chief conservative paper is the famous old *Le Figaro*. This is a Catholic but not an MRP paper. The largest of the metropolitan evening papers is *France-Soir*, pretty much nonpolitical and rather like our own big city evening dailies.

A systematic treatise on the subject of French political parties is Léon Jacques, *Les partis politiques sous la troisième république* (Paris, 1913). Mention may also

be made of the *Tableau des partis en France* by André Siegfried (Paris, 1930). The best recent work is François Goguel, *La Politique des partis sous la IIIe République* (Paris, 1946).

Books of varying value are Léon Blum, *Le réforme gouvernementale* (Paris, 1936); Alexander Werth, *France in Ferment* (New York, 1934); Ralph Fox, *France Faces the Future* (London, 1936); André Tardieu, *France in Danger* (London, 1935); Maurice Thorez, *France Today and the People's Front* (London, 1936); Carleton J. H. Hayes, *France: A Nation of Patriots* (New York, 1930); R. H. Soltau, *French Parties and Politics, 1871-1930* (London, 1930); and the same author's *French Political Thought in the Nineteenth Century* (New Haven, 1931).

On the Boulanger episode see A. Mermeix, *Les coulisses du boulangisme* (Paris, 1890). The Panama scandal is elucidated in Quesnay de Beaurepaire, *Le Panama et la république* (Paris, 1899). The monumental work on the Dreyfus case is J. Reinach, *Histoire de l'affaire Dreyfus* (4 vols., Paris, 1924). For the opposing side of the case the best book is Dutrait-Crozon, *Précis de l'affaire Dreyfus*. The story, written by his sons, is in Alfred and Pierre Dreyfus, *The Dreyfus Case* (New Haven, 1937).

On the question of church and state a well-known volume is that of Paul Sabatier, *Disestablishment in France* (Paris, 1906). Antonin Debidour, *L'église catholique et l'état sous la troisième république, 1870-1906* (2 vols. Paris, 1906-1909) is anticlerical. The other side is set forth in L. R. P. Lecanuet, *L'église de France sous la troisième république* (3 vols., Paris, 1930).

A concise and informing discussion of Popular Front policies is *The New Deal in France* by John C. deWilde, published by the Foreign Policy Association (Foreign Policy Reports, Vol. XL, No. 12, September 1, 1937).

Parties in the Fourth Republic. As yet, little material on this subject is available in English except for Mario Einaudi and François Goguel, *Christian Democracy in Italy and France* (Notre Dame, Ind., 1952); H. W. Ehrmaun "The French Peasant and Communism" in *The American Political Science Review* Vol. XLVI (March, 1952); press despatches and the occasional article. A good running account of the parliamentary battle was obtainable formerly in *News from France*, a bulletin published by the Press and Information Division of the French Embassy. This has been discontinued, but the Division still issues pamphlets giving political information from time to time. These may be obtained from it free of charge. The address is 972 Fifth Avenue, New York 21, N.Y. The book by Gordon Wright, *The Reshaping of French Democracy* (New York, 1948), already mentioned in connection with the constituent assemblies, also contains shrewd commentary on the French parties. Dorothy M. Pickles, *France Between the Republics* (London, 1946), has a clear account of the politics of the resistance movement and the parties before the adoption of the 1946 constitution. Reference should also be made to the appropriate chapters in E. M. Earle (ed.), *Modern France* (Princeton, 1951), and to the excellent article by Maurice Duverger, "Public Opinion and Political Parties in France," *Am. Pol. Sc. Rev.*, XLIV, 4, 1069-1087 (Dec., 1952). Books in French include Jacques Fauvet, *Les partis politiques dans la France actuelle* (Paris, 1947); by the same author, *Les forces politiques en France* (Paris, 1950); Paul Marabuto, *Les partis politiques et les*

mouvements sociaux sous la IVe République (Paris, 1950); Maurice Duverger, *Les Partis Politiques dans l'Etat Contemporain* (Paris, 1951); Angelo Rossi, *Physiologie du parti Communiste français* (Paris, 1948). See also C. A. Micaud, "Organization and Leadership of the French Communist Party," *World Politics* Vol. 3 (April, 1952). A complete history of French farm politics may be found in Michel Augé-Laribé, *La politique agricole de la France de 1880 à 1940* (Paris, 1950).

CHAPTER XXIX

French Law and Law Courts

There is no better test of the excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen.—Lord Bryce

The influence of feudalism on law. Out of the chaos which followed the collapse of the Roman Empire there arose and spread over most of Western Europe a great system of political and social relations known as feudalism. It was an institution based upon the tenure of land. The lord gave his vassals land and protection; the vassals gave him services in return. The lord, too, was the judge within his domain and the source of all justice. This *droit de justice* was the very essence of feudalism and its effects were far-reaching. The student of history is well aware of the fact that feudalism arose in mediaeval Europe, dominated most of the continent for several centuries, and ultimately fell; but he does not always realize that its influence continued long after the system itself had passed away.

In England and in France. Anyone who compares the legal development of England and France from earliest times down to the beginning of the nineteenth century will be impressed by the striking contrast which marked the evolution of law and law courts in the two countries. These two nations are neighbors, with only a narrow strip of water between, but their respective legal backgrounds could not be more dissimilar if they were situated in different hemispheres. The reason for this is to be found in the fact that England, immediately after the conquest, became a completely feudalized kingdom, practically an embodiment of the feudal ideal. All land was held by one form of tenure, and everyone owed allegiance to his feudal lord, who in turn owed allegiance in a hierarchy ending with the king. The king, as holder of the entire kingdom, had the right to supersede local or manorial courts in the dispensing of justice. This the Conqueror's successors were able to do, so that the king's

judges were soon busy developing the common law, not based upon royal decrees but upon the customs common to the whole kingdom.

The French *coûtumes* in contrast with the English common law. Customary law developed in France as well, but there the feudal kings had never been able to extend their actual jurisdiction much beyond their own domains, so that French customary laws were not based upon national but upon local customs. The dukes and counts were too powerful in their own dominions to be controlled by their king. Hence it was that over a large portion of France each local area developed its own system of customary law, its own *coûtume*, as it was called. These in due course were put into written form and administered by the local courts. The *Coûtume de Paris* was the most notable among these bodies of localized law, but there were hundreds of others, and they differed greatly in character.¹

The French legal system before 1789. Down to the Revolution of 1789 there was no system of common law in France. But this does not mean that there were no laws that applied to the whole kingdom. Superimposed upon the *coûtumes* was a body of royal decrees, edicts, and ordinances. It will be remembered that in feudal England the king could not legislate without the consent of parliament, so that the king-in-parliament became the real legal sovereign. In France, however, this feudal idea had given way to the old Roman law conception of absolute monarchy.² This the French kings were able to apply unimpeded by any representative assembly. During the sixteenth and seventeenth centuries it became the practice to issue elaborate ordinances on various subjects, and in the reign of Louis XIV (1662-1715) a long series of them appeared, the *grandes ordonnances*, as they were called. Some of these royal edicts were veritable law codes, dealing in a comprehensive way with such matters as commerce, wills, trusts, and judicial procedure; and they applied uniformly to the whole of France. Most of these great ordinances were issued on the authority of the king alone, for no elective parliament met in France from 1614 to the eve of the Revolution.³ This whole body of royal legislation, however, covered only a small part of the entire field and hence did not serve to unify the legal system of the country.

The situation when the Revolution came. The leaders of the French

¹ In the southern part of France, the *pays de droit écrit* as it was called, the principles of Roman law were more generally and uniformly applied, but even here they were somewhat modified by local custom.

² "From the second century the Emperor had complete legislative power; from the third no one any longer shared it with him."—J. Declareuil, *Rome the Law-Giver* (New York, 1926), p. 27.

³ There was a requirement that every royal edict or decree must be registered by the parliament of Paris before it could become valid. But this was not a parliament in any real sense; its members were appointed by the king. And if they declined to register an ordinance (as they did on a few occasions), the king could come before the *parlement* and overrule the opposition by the use of a prerogative known as the *lit de justice*.

Revolution were well aware of the weakness which this legal decentralization involved. They knew that it constituted a barrier to the creation of a truly national sentiment, that it stood in the way of the *fraternité* which the Revolution was seeking to create. Not only this but they felt very keenly that the *coûtures* were mediaeval in spirit and out of tune with the legal requirements of a modern age. Revisions had been made from time to time, it is true; but these revisions had not changed the spirit of the laws. Revising a *coûtume* was like touching up the portrait of a mediaeval knight and calling him a modern aviator. So the revolutionists decided that these bodies of customary law must go.

The abolition of the *coûtures* and the promulgation of the *Code Civil*. In keeping with this decision the Revolutionary Assembly proceeded to abolish the greater portion of the old jurisprudence. Various general statutes, applying to the whole of France, were enacted instead. Then it seemed desirable to consolidate these new statutes, together with what was left of the old law, into a series of codes, and the revolutionary government set its hand to this enterprise; but it was no small task and for a time slow progress was made. The revolutionary government, moreover, had matters of much greater urgency to deal with during the closing years of the eighteenth century. Hence it was not until Napoleon Bonaparte came into power as first consul that the work of codifying the whole jurisprudence of France was speeded up and finished. The Corsican went at the project with characteristic energy, and completed it within a few years.

The far-reaching influence of the Napoleonic codification. Napoleon was very proud of this reform. During his exile at St. Helena he referred to it as the greatest achievement of his age and one that would profit France more than his score of victories. "My code alone," he said, "has done more good in France than the sum total of all the laws that preceded it." In this he was right, for the *Code Napoléon* has had a profound influence upon legal development not only in France but in other parts of the world. It has extended its legal principles and doctrines to the uttermost parts of the earth, to regions where the tricolor never flew. The present systems of civil law in Italy, Spain, Portugal, Belgium, and in nearly all the Latin-American states are based upon it. The civil codes of Germany, Japan, Greece, and many other countries have drawn upon it heavily. It has had a greater vogue and perhaps a wider influence than the common law of England. It has perpetuated and revived much of what was best in the civil law of ancient Rome. "Its provisions," as Napoleon himself once boasted, "not only preach toleration, but organize it—toleration the greatest privilege of man."⁴

⁴R. M. Johnston, *The Corsican* (Boston, 1910), p. 299.

The Corsican's most enduring achievement. The first consul did not himself do the work, of course; but he selected the jurists and gave them their inspiration.⁵ It was his driving power that put the codes into effect, and they are his most enduring monument. When you go to Paris and look upon the marble cenotaph where rest the bones of this astounding man, you will see inscribed around it the names of his great military victories—Marengo, Wagram, Austerlitz, Jena, Friedland, and the rest. But you will find no mention of the greatest service that he rendered to France and to the world. In history Themis has never been so glamorous as Mars.

The other codes. The *Code Civil* (to use its modern republican designation) was only the first of a series. Within the next half dozen years four other codes were compiled and promulgated. These dealt with civil procedure, criminal law, criminal procedure, and commerce. Before Napoleon relinquished his imperial throne he had established throughout the whole of France a single system of law and legal procedure. Revisions of this system have taken place at intervals, but the fundamentals remain unchanged.⁶ The Napoleonic codes were so comprehensive that they did not leave a great deal to be covered by subsequent legislation. In France, as a consequence, there has been no such outpouring of statutes as has taken place in England, in America, and in the British self-governing dominions. This, however, is not an unmixed blessing, inasmuch as the codifying of a legal system conduces to rigidity. It is sometimes said that the codes have tended to stereotype the legal system of France and to take from it that quality of quick responsiveness to new economic needs which every progressive legal system ought to have.⁷

A distinctive feature of modern French legal development. This suggests reference to a distinctive feature of French law and legal interpretation. In Great Britain and in the United States the law is being constantly developed, expanded, and even altered by judicial decisions. Both these countries have built up great bodies of judge-made law. Although it is the theory of Anglo-American jurisprudence that the judges have no authority to change the law, but only to interpret and apply it, everybody knows that English and American courts do, in fact, make changes, often very considerable changes.

The doctrine of *stare decisis*. One judicial decision advances a little upon another, and so on year after year, until there exists a wide gulf between the law as it is and the law as it was. Simple words and phrases receive new shades of meaning, and ultimately acquire new meanings altogether. This

⁵ Much credit is due to the genius of the second consul, the brilliant lawyer, Cambacérès.

⁶ In 1904, on the centenary of the *Code Civil*, there was a somewhat extensive revision.

⁷ Some of the American states and the British dominions also have codes—civil codes, criminal codes, and codes of procedure; but they are not so comprehensive as those of France and their provisions are constantly being adjusted to new conditions by means of judicial interpretation.

gradual modification of the law by judicial decisions has been made possible in England and the United States by the traditional respect which the courts always render to precedent. The doctrine of *stare decisis*—the doctrine that a court will always be guided by a previous decision unless there is a compelling reason for reversal—has resulted in giving judge-made law a definite drift and direction.

Does not exist in France. But in France there is no such doctrine. On the contrary it is definitely understood that no court is under any obligation to be guided by its own previous decisions or even by the decisions of a higher court. Precedents may be cited in the French courts, and frequently are; but no great reliance has been placed upon them, and the judges are free to disregard even the weightiest precedents if they feel so inclined. When a French tribunal gives a decision which directly contravenes some previous ruling, nobody says (as we do in America) that “the court has reversed itself.” It has merely changed its mind or its attitude, in accordance with altered conditions, as every French court is expected to do. At the same time it is impossible for any court, in any country, to decide every case on its own individual merits, without some reference to what has already been adjudged in similar cases. The prestige of a judiciary demands that its decisions shall be reasonably consistent.

Nevertheless, precedents are usually followed. So, while the doctrine of *stare decisis* has never had any formal recognition in France, and while no great body of controlling decisions has been built up as in America, there is nevertheless a definite judicial consensus on many fundamental questions. In other words, while the courts are free to disregard precedent, they have found in the nature of things that it is easier and better to maintain a reasonable standard of consistency in their interpretations of the law. Side by side with the written provisions of the codes, they have been gradually building up, therefore, a body of judge-made laws which fills the gaps in the codes and clears the obscurities.

Another distinctive feature: no practice of declaring laws unconstitutional. There is another feature of the French judicial system which the American student will do well to note. France has had for over 150 years a written constitution, in fact a series of such documents. And the French constitution, like the American, is ostensibly the supreme law of the land; hence any ordinary law which conflicts with its provisions is said to be unconstitutional and void. But no French court has ever been given the power to declare a law unconstitutional, or has ever assumed the right to annul it on that ground, no matter how repugnant to the constitution the statute may be. And no such power has been given to the courts by the constitution of the Fourth Republic.

A chance for controversy. What happens, then, if the French parliament

passes a law which contravenes a constitutional provision? Suppose it should pass a statute abolishing the secret ballot, although the constitution expressly stipulates that members of the National Assembly shall be elected by "universal equal, direct and secret suffrage."⁸ This questions cannot be authoritatively answered because the matter has not yet been put to the test. During the sixty-five years of the Third Republic no law passed by the French parliament was ever seriously questioned as to its constitutionality. Suggestions were made from time to time that the President of the Republic, if he deemed a law unconstitutional, could refuse to promulgate it and thus keep it from going into force; but no president ever took this action. And in the new constitution there is now a provision that if the President of the Republic declines to promulgate a law for any reason, the president of the National Assembly shall do it.⁹

The constitution of 1946, unlike its predecessor, sets up a novel method of determining the constitutionality of a law when doubt arises. The plan is somewhat analogous to one which was put forth in the American constitutional convention of 1787 but was rejected by that body. The French arrangement is briefly as follows: A constitutional committee is set up at the beginning of each legislative session to "determine whether laws passed by the National Assembly imply amendment of the constitution," in other words, whether they go outside the terms of the latter. The President of the Republic presides over this committee; its other members are the president of the National Assembly, the president of the Council of the Republic, seven members chosen by the National Assembly and three by the Council of the Republic—making thirteen in all. The representatives selected by the two legislative chambers must be from outside their own membership and the choice must be by proportional representation of the party groups. If this committee finds that any law implies amendment of the constitution, the law is sent back to the National Assembly for reconsideration, and if the parliament adheres to its original vote, the law may not be promulgated unless and until the constitution has been formally amended to cover the matter at issue. But no court in France has any power to pass on the constitutionality of laws.

This committee can be called into action only by the original move of the Council of the Republic, which must approve its creation by absolute majority. It can do this only before the law in question has been promulgated. Furthermore, the committee may examine only laws alleged to contravene Titles I to X of the constitution. This means that laws appearing to violate the constitutional rights of individuals or social categories are not subject to such review. It would appear that this new method is really less effective than the former

⁸ Art. 3.

⁹ Art 14.

practice whereby the Senate simply vetoed laws it considered to be unconstitutional.

Some other contrasts between the French and American judicial systems. Some other general contrasts between the French and American judicial systems remain to be noted. In France the courts are localized; the judges sit at a fixed place and do not go on circuit as is the practice to a considerable extent in both England and America. In France, moreover, every court except the lowest is provided with a bench of judges; in no higher court does a single judge give decisions. Every decision of a French court (save in the lowest courts) must be rendered by the concurrence of at least three judges. There is an old French proverb, *juge unique, juge inique*,¹⁰ which expresses the public sentiment on this matter; but it has little justification, as the history of English and American courts has shown. A single judge is no less careful, and no less fair, than a bench of judges. On the contrary he assumes the entire responsibility, whereas such responsibility is somewhat dissipated when decisions are rendered by a vote of three judges against two, or of five against four. But the collegial tradition is strong in the French judicial system and cannot easily be broken.

The constitutional and organic laws of 1875 contained no provisions relating to the courts, and the constitution of 1946 deals only with the high court of justice and the superior council of the judiciary. The former body is made up of members elected by the National Assembly at the opening of each legislative session and serves as a tribunal for the trial of the President of the Republic or of members of the ministry when they are indicted by the National Assembly. The President of the Republic may not be placed on trial except for high treason, but ministers may be tried for "crimes and misdemeanors committed in the exercise of their functions." This new impeachment procedure supersedes the old one under which the Senate was empowered to serve as a court of impeachment in the case of a president charged with high treason by the Chamber of Deputies. But no President of the Third Republic was ever impeached. The organization and procedure of the new high court of justice under the Fourth Republic was determined by a special law passed on October 27, 1946.¹¹ It has no jurisdiction except in impeachments, and its decisions are not subject to appeal.

According to the provisions of this law, the high court of justice consists of a president, two vice presidents, thirty regular judges, and thirty deputy judges. The National Assembly elects all the judges. Twenty regular judges are chosen

¹⁰ "Single judge, unfair judge."

¹¹ Excerpts from this law may be found in H. L. Laing *et. al.*, *Source Book in European Governments* (New York, 1950), pp. 125-128.

from the Assembly's membership by proportional representation, each party in the Assembly submitting lists which contain twice as many names as there are judges to be elected. Ten deputy judges are chosen by the Assembly from outside its own membership by a two-thirds majority and secret ballot. The deputy judges are chosen in the same way as the regular judges. The Assembly also elects the president of the high court and the two vice presidents by a two-thirds majority and secret ballot. In the same way it also chooses a prosecutor-general and two solicitors-general from its own membership or from outside. Provision is likewise made for a "commission of enquiry" consisting of nine members. This smaller body, after a preliminary examination of the charges filed by the National Assembly, determines whether there is ground for proceeding with the impeachment. If the matter goes to trial, the sessions are public and the verdict is determined by an absolute majority of the judges. A separate vote, in case of conviction, is taken on the penalty (which may be any penalty authorized by the regular criminal code). A curious provision of the law stipulates that if no penalty obtains an absolute majority after two ballots, the most severe penalty proposed on these ballots is eliminated, and so on, rejecting each time the most severe penalty until an absolute majority is forthcoming.

How French judges are chosen. In England and in the United States the judges are recruited from the regular members of the legal profession. An appointment to the bench is customarily regarded as the recognition of a successful career at the bar. In France this is not the case. Members of the French judiciary are regarded as the representatives of a separate profession, with no long training in the active practice of the law. The young Frenchman, when he begins to study law, decides whether he wants to be a lawyer or a judge, and plans his studies accordingly. If he chooses a career in the judiciary he does not hang out a sign and hustle for clients when he has finished his course. After a short term of service in a lawyer's office, he takes a rigid examination and if successful he becomes an assistant prosecuting attorney or a substitute judge in a court of first instance. In time, if he earns promotion, he will become a regular judge of this court, and eventually the presiding judge of it. From this position he may be named as a *conseiller* on one of the courts of appeal, and if he sufficiently distinguishes himself among his colleagues there he may ultimately attain the zenith of his aspirations by donning the red robe which is the insignia of the Court of Cassation.

The judiciary a branch of the civil service. In other words, the French judiciary is regarded as a career service for which a special form of training is required. This is quite contrary to the tradition in the United States where any lawyer is deemed fit to be a judge if he can get himself appointed or

elected. There are no elective judges in France. An elective judiciary was established during the Revolution but it proved unsatisfactory and Napoleon abolished it in 1804. No serious attempt to revive it has since been made. In the Third Republic the bulk of the judiciary was appointed by the minister of justice from a list of qualified candidates. There is no doubt that political considerations sometimes influenced these appointments, and the new constitution attempted to improve upon the method of appointment by giving this power to a body called the superior council of the judiciary with a membership of fourteen. Two of these are *ex officio*: the President of the Republic and the minister of justice; ten are elected by the National Assembly. None of these may be deputies and four must be judges, one from each category of the judiciary. The other two members are chosen by the President of the Republic and must be lawyers who are neither judges nor members of parliament. The elected and appointed members serve for six-year terms. The committee makes its appointments by majority vote, the president having a casting vote in case of tie.¹²

Removal of judges. Judges in the regular French courts are not appointed for any definite term. They hold office until they reach the retirement age fixed by law. But with the exception of presiding judges they may be disciplined, even to the extent of removal, by majority vote of the superior council of the judiciary. (The minister of justice formerly had this power.) Presiding judges are declared by the constitution to be irremovable. Whether the foregoing safeguards against removals for political reasons will prove adequate cannot yet be predicted. It may be pointed out, however, that by the nature of their appointment, a majority of the council's membership can hardly be wholly immune from political influences. In any event there would seem to be no simple way in which judges can be assured against political influence in the matter of promotions.

The dual system of law and courts. A final difference between the French and American legal and judicial systems is the separation which the former makes between ordinary law and administrative law, between ordinary courts and administrative courts. It is sometimes said that France has one system of law for the ordinary citizen and another for the public official; but this, as will be shown in the next chapter, is a wholly unfair way of stating the matter. The French system of administrative law redounds to the benefit of the ordinary citizen and not to his disadvantage. It affords the Frenchman a measure of redress against his government which the American citizen often cannot obtain. The remedies which the French citizen has against his government are

¹² This method of appointment does not apply to those judges who are in the offices of the public prosecutors. They are appointed by the minister of justice.

speedier, less costly, and in general more satisfactory than those which Americans often possess in relation to their national and state governments. This whole question is of sufficient importance to deserve full discussion later; meanwhile it is enough to emphasize the fact that France has two distinct sets of courts, known as regular courts and administrative courts, each with its own judges, jurisdiction, and procedure.

ORGANIZATION OF THE REGULAR COURTS

1. The regular courts; the *juge de paix*. The regular courts administer the civil and criminal law. The lowest among these courts in France, as in England, are the local courts presided over by the justices of the peace (*juges de paix*). There is one such court in every *canton* and several in each of the large cities—nearly 3,000 of these courts in all. It has jurisdiction in civil controversies where the amount involved is small, and in criminal cases where the offense is a minor one. The procedure is informal and inexpensive. The *juge de paix* spends most of his time straightening out misunderstandings, his main function being to prevent lawsuits, not to try them. In his day's routine he deals with neighborhood quarrels over land boundaries, trespass and minor damages to property, disputes between landlord and tenant, liens on small salaries, and accidents to workmen. It is not so much a knowledge of the law as a knowledge of human nature that the French justice of the peace needs in his work. He is a man of influence in his neighborhood and during the Third Republic was often actively engaged in politics, with some detriment to his impartiality.

2. Courts of the first instance. Next come district courts, or courts of the first instance. There is at least one of these in every *arrondissement* and it is always a tribunal, provided with several judges, at least three and sometimes as many as fifteen. Where there are more than six judges the court may divide itself into sections, each sitting in different towns within its area. Or it may divide itself into a civil section and a criminal section. The judges sit together, one of them serving as presiding judge, and render their decisions by majority vote. No statement as to the number of dissenting judges is ever made. Each court is assisted by a public prosecutor (*procureur*) who is a regular member of the judiciary and conducts the cases as is done by a district attorney in the United States.

Their jurisdiction. The courts of the first instance hear appeals from the decisions of the justices (where small sums are involved; otherwise the decision of the lower court is final), and have original jurisdiction in all civil controversies no matter how large the amount involved. They also have original jurisdiction in a limited range of criminal cases. But all their decisions in crim-

inal cases, and in civil cases involving large amounts, may be appealed to the higher courts. The courts of the first instance do not use juries.

3. Courts of appeal. Then there are courts of appeal.¹³ Each court of appeal is also made up of a bench of judges (*conseillers*) and its jurisdiction extends over a judicial province, each of which contains from one to seven of the French departments. The court of appeal at Paris, for example, has jurisdiction over the Department of the Seine and five other departments. These courts sit in sections, each section having at least five judges, one of whom serves as presiding judge of the section. There is a civil section, a criminal section, and an indictment section (*chambre d'accusation*) which performs the functions of a grand jury.

Public prosecutors. Each section of the court of appeal is assisted by one or more public prosecutors known as *procureurs-généraux*, also by various assistant prosecutors, attorneys, bailiffs, and other court functionaries. In France all these *procureurs*, *avoués*, *huissiers*, and so on are regarded as members of the judiciary. The regular judges are known as the *sitting* judiciary, while the others make up the *standing* judiciary. This is in truth a realistic way of differentiating them. No juries are used by the court of appeal in any of its sections. The work is confined almost entirely to the hearing of appeals from the courts below. In civil cases the decisions of a court of appeal are final except on questions relating to the interpretation of law. Such issues can be carried to the supreme civil tribunal, the Court of Cassation.

Methods of pleading. The civil procedure in these courts of appeal seems strange to an American lawyer. The case is prepared, both sides of it, by *avoués* or attorneys. They make out the complaints and replies, rebuttals and replications, for which they charge their clients a stiff fee, and which they serve on one another by means of pompous *huissiers* or uniformed bailiffs whose services are also expensive. The judges wait until the lawyers have finished this interchange of documents and then listen to oral argument on such points as are still in disagreement. They do not see the clients, for the clients do not come into court. These may be fictitious persons so far as the judges are concerned. Sometimes they are—French versions of John Doe v. Richard Roe. No oral evidence is presented in the French courts of appeal. It is all in the form of documents. When the arguments have been concluded by the attorneys, the judges confer and reach a decision.

4. The courts of assize. Serious criminal cases, brought up from the courts of first instance, do not ordinarily go to the criminal section of the court of appeal, but are tried in regular criminal courts known as courts of assize.

¹³ Twenty-seven for France and one each for Corsica, Algiers, Tunis-Rabat, Guadeloupe, Martinique-Guiana, and Réunion.

These courts of assize have no jurisdiction in civil controversies; they have original jurisdiction in serious criminal cases as well as hearing criminal appeals.¹⁴ There is one such court for each of the eighty-nine departments in France. Rather curiously they do not form a separate rung in the ladder of regular courts but are specially organized four times a year or oftener. The presiding judge is named from one of the courts of appeal; his two associate judges are drawn either from a court of appeal or from a court of the first instance. This is the only French court which uses a jury, and it sits with a jury in practically all cases. Juries are never used in France for the trial of civil suits.

The jury system in France. The trial jury in France (as in England and America) is composed of twelve persons chosen by lot from a panel of citizens, but its procedure is somewhat different from that with which Americans are familiar. For one thing, its decisions are reached by majority vote and do not require unanimity. But when the vote stands six to six, or seven to five, for conviction, the three judges, if they are unanimous, may render a verdict of acquittal. Abortive jury trials, through failure to reach an agreement, are therefore very rare.

Does not function well. The jury system is not indigenous in France, but was transplanted from England.¹⁵ And like most transplanted institutions it does not seem to be giving satisfaction. Its critics during the Third Republic were numerous and vehement. One well-known French jurist declared that in many cases the courts might as well "allow justice to depend upon a throw of the dice as upon the verdict of the jury." Composed exclusively of petty shopkeepers, he goes on to say, "it often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults."¹⁶ Others have stigmatized the French jury as a sacrifice of common sense to an Anglo-Saxon superstition, and one that merely works havoc with the orderly administration of justice. Too much weight, however, should not be given to such aspersions. There are many Americans who feel the same way about the jury system, yet its merits in the United States clearly outweigh its shortcomings. It is easier to detect flaws in the system of trial by jury than to suggest something better in its place.

5. The Court of Cassation. The supreme court of France, for all ordinary cases, both civil and criminal, is the Court of Cassation.¹⁷ Its jurisdiction covers the whole of France, this being designed to ensure uniformity in the interpreta-

¹⁴ Incidentally, however, they may deal with the claims of a civil party in a criminal case. See below, p. 486, *footnote*.

¹⁵ Some legal historians hold that it originated among the Franks and was brought to England by the Normans. If so, it took root in England and disappeared in its country of origin.

¹⁶ Joseph Barthélemy, *The Government of France* (New York, 1924), p. 176. (Incidentally it may be mentioned that this author became one of the legal advisers of the Vichy régime.)

¹⁷ The name comes from the verb *casser*, to quash, overrule, or annul.

tion of the laws. But it is not a supreme court of appeal in the usual sense, because it has nothing to do with the facts of a case; its function is merely the cassation or annulment of lower court decisions which have wrongly interpreted the law.

Its organization and powers. The Court of Cassation sits in Paris and has a bench of forty-nine judges, including a first president, three presidents of sections, and forty-five councillors. In addition there is a *procureur-général* and several assistants. Like the courts of appeal this highest court does its work in sections or chambers. One of these (*chambre de requêtes*) is a screening section and handles all appeals in a preliminary way. The two others deal with civil and criminal cases. If the chamber of requests determines that the appeal in a civil case does not deserve consideration, the issue goes no further. In this way frivolous appeals on hair-splitting points of law are discouraged. The Court of Cassation has no original jurisdiction; all cases come to it from some court below. It cannot change the verdict of a lower court; it must either confirm the decision or refer the case back for a new trial. But it does not, as in America, send the case back to the same court for retrial; the rehearing must be given to a different court of the same grade.¹⁸ Since appeals involving the same legal questions are being constantly brought before the Court of Cassation, this tribunal has gradually built up a body of case-law despite the fact that it is not bound by its previous decisions. It should be reiterated that although the Court of Cassation is the court of last resort in all ordinary civil and criminal cases, it has no power to declare any law unconstitutional.

Its prestige and procedure. The prestige of this court is very great. A seat on its bench is the vaulting ambition of every judge and *procureur* in the lower courts of France. The procedure used in the Court of Cassation is quaint, having come down without much change from the great ordinances of Louis XIV. Yet it is surprisingly like that followed by the Supreme Court of the United States. The contending parties submit briefs in writing; then the actual trial consists of short oral arguments on the principal issues by the chief attorneys for both sides. These legal points of disagreement are then studied by a single judge who submits his findings to the whole chamber, which may accept or modify these findings as it sees fit.

Special tribunals: (a) the courts of industrial arbitration. Mention ought to be made of three special tribunals which have stood outside the hierarchy of regular courts but whose work has been of considerable importance. The first of these are the courts of industrial arbitration (*conseils de prud'hommes*). These are semijudicial bodies made up equally of employers and

¹⁸ In certain exceptional cases, however, it may change the lower court's decision without referring it back. See below, pp. 488-489, *footnotes*.

employees with a justice of the peace presiding. They settle, or try to settle, labor disputes—especially those connected with wages, conditions of work, and wrongful dismissals. Thus they afford a prompt and inexpensive means by which the worker can get redress if injustice has been done. An appeal may be taken to the regular civil tribunals in any case where the amount involved is above a certain sum.

(b) The commerce courts. In the second place, there are the commerce courts (*tribunaux de commerce*) which decide controversies arising out of commercial transactions, including bankruptcy proceedings. They are established in all French cities of any considerable size. The judges are elected by the merchants of the municipality. In Paris there are about 47,000 persons qualified to participate in the election of these commercial judges. They relieve the regular courts from the task of handling a huge grist of trade disputes. Appeals from the decisions of the commerce courts go to the courts of appeal.

(c) Courts of expropriation. Finally, there are special courts for the fixing of compensation when private property is taken for public use under the right of eminent domain. These courts are composed of a jury alone—sixteen citizens drawn for the purpose and known as a jury of expropriation. They report their findings to the civil court which promulgates the award. In the United States, when private property is taken for public use, the constitution requires that the deprived owner shall be given “just compensation.” The amount of this compensation, in the event of disagreement, is fixed by the regular courts.

JUDICIAL PROCEDURE

A survey of criminal procedure in France. The procedure in the regular courts of France differs greatly from that followed by the courts of Great Britain and the United States. To explain all the differences would lead one into a long and technical narrative, of no interest save to legal specialists. But the more outstanding contrasts may be made clear by outlining how a criminal case runs its course in the French tribunals. This is not to imply that in France all criminal cases are tried in exactly the same way. The procedure is not absolutely fixed and may be varied somewhat as the occasion demands. But what follows will serve as a fairly typical illustration.

The *enquête* before the *juge d'instruction*. Let us suppose that a serious crime is committed and an arrest made by the police. The prisoner is first taken before an examining officer known as a *juge d'instruction*. Despite his title, this functionary is not a judge at all but a preliminary inquisitor who makes no finding of innocence or guilt. He merely holds an inquiry during which he questions the accused person. This *enquête* is not a public hearing, but the accused is permitted to have his counsel present. Witnesses are summoned, and

all phases of the case are gone into. Then the *juge d'instruction* puts a summary of the matter into writing, and if he finds that there is sufficient ground for holding the accused, he refers the case to the nearest *chambre d'accusation*, which is the indicting body in France, there being no grand jury system as in the United States.¹⁹

Its nature. In any event the preliminary *enquête* is thorough and searching. It leaves no portion of the accused's life-history unrevealed. Complaint is often made that there has been too much administering of the "third degree," too much grilling and browbeating of the accused in the endeavor to force a confession of guilt. On the other hand, there is an obvious safeguard against such maltreatment of accused persons so long as the prisoner is entitled to have his counsel present at the inquiry.

The indictment. Then, if the matter is sent to the chamber of accusation, the latter does not hear any additional evidence but merely examines the record. It may order the accused to be discharged, or it may frame an indictment (*acte d'accusation*) against him. The actual work of drawing this document is done by the prosecuting officers of the court. Unlike the indictments returned by an American grand jury, the *acte d'accusation* is not a carefully worded enumeration of the charges against the accused person, but a voluminous recital which may (and often does) include a vitriolic tirade against him, his character, his past misdeeds, and even the bad reputations of his relatives. It sounds like a prosecuting attorney's concluding address to an American jury in a criminal trial.

An American comparison. Yet no one should conclude from this procedure that innocent persons run a greater risk of indictment in France than in the United States. Quite the contrary. In the United States the power to indict rests ostensibly with the grand jury, a body of laymen chosen by lot, but they are quite susceptible to the influence of the district or state's attorney. Often they merely do what he advises them to do, and he, being an elective official, is not always immune from political pressure. Hence it frequently happens that grand juries are used by district attorneys for the promotion of their own political ambitions. In France the power to indict rests with a chamber of at least five judges, who are appointed by the chief of state and are irremovable except for good cause. All five judges must sign the indictment. These preliminaries, moreover, are pushed through more promptly in France than in this country. The accused must be brought before a *juge d'instruction* within twenty-four hours, and the chamber of accusation does its part within the next fortnight.

The trial: selection of the jury. After his indictment the accused is

¹⁹ It will be recalled that the *chambre d'accusation* (or, to give its full title, the *chambre des mises en accusation*) is one of the sections of a court of appeal.

brought to trial in a court of assize. Three judges sit on the bench in this court and the jury panel consists of thirty-six citizens whose names are drawn from an urn one by one. The prosecution and the defense may challenge any juror, with or without cause, until there are no more names in the urn than there are jurors to be selected. Thereupon no further challenges are permitted. When a long trial is anticipated, it is the practice to select, in addition to the twelve regular jurors, one or two extra jurymen who sit with the others and are available for service in case a regular juror is taken ill. As a rule it does not take long to impanel a jury in France, never more than a few hours. In America, as everyone knows, it may take several days, and sometimes several weeks, one panel after another being exhausted by challenges.

The judge's interrogatory. When the French jury has been chosen, the the presiding judge explains the accusation but does not ask the prisoner to plead. Nor does the prosecution begin the trial in American fashion by giving a review of what it expects to prove. Instead, the presiding judge begins his *interrogatoire*, which is an examination and cross-examination of the accused. This may continue for several hours. Meanwhile the associate judges, the public prosecutor, and the counsel for the defense sit by in silence.

Its nature. If the presiding judge is a skilful questioner, this arrangement provides a quick and effective way of bringing out the essential facts. But many of the French judges are neither skilful nor unemotional, hence the interrogatory has sometimes developed into a disputation between the prisoner and the judge. Police officers have complained that when a judge grills an accused person too severely during his interrogatory the latter gets the jury's sympathy to such a degree that he is sometimes acquitted in spite of the strong evidence against him. On the other hand, the accused is by no means without safeguards. He cannot be a witness and so is not sworn nor subject to a perjury action if he lies in his own defense. Nor is he compelled to answer the judge's questions.

Presentation of the evidence. After the presiding judge has finished his attempt to get the facts from the prisoner, the witnesses are called. Usually the witnesses for the prosecution are called first, then those for the civil party²⁰ (if there is one), and finally those for the defense. This is the order laid down in the code of criminal procedure; but it is sometimes varied and the witnesses are called in irregular order, so that the jury may not know which side they are testifying for.

²⁰ The term "civil party" requires a word of explanation. In France anyone who has been injured in person or in property as the result of a crime may enter the case as a *civil party*. For example, a truck driven by a drunken driver collides with a taxicab and kills a passenger therein. The truck driver is indicted and the state prosecutes. These are the two parties to the criminal side of the case. But the owner of the demolished taxicab may enter as a *civil party*, claiming damages. In the United States he would have to enter a separate civil suit which would be tried independently.

Examination of witnesses. The examination of the witnesses is conducted in a way quite different from that to which we are accustomed in the United States. Each witness, on being sworn, is instructed to tell all he knows and most of them obey this instruction too literally. The code expressly provides that a witness must not be interrupted, but the Court of Cassation has ruled that if he rambles too far from the case the presiding judge may call him to order. In a French court witnesses are *heard*, not *questioned*. So everything goes as evidence at a French assize—hearsay, rumors, opinion, suspicion, animosity, invective, anything that a witness chooses to pour forth. He may tell what he saw, what somebody else saw, what he heard, or what somebody else heard somebody say he saw. Accordingly there are no long wrangles between the attorneys as to whether certain evidence is admissible or not. Anything is admissible if the presiding judge cares to listen to it, for the code provides that he may admit “whatever in his opinion will conduce to the ascertainment of the truth.”

The cross-examination. Then, when the witness has had his say (without interruption) the presiding judge may question him. This he usually proceeds to do without first giving the lawyers a chance. When the judge has finished with the witness he must permit the public prosecutor to ask questions directly; but the counsel for the defense, and for the civil party if there is one, are never allowed to examine or to cross-examine in this way. They must ask their questions through the presiding judge, and the latter may decline to put any question that he deems irrelevant. Needless to say, this arrangement greatly abbreviates the time taken in the examination of witnesses by counsel. Jurors are also allowed to ask questions, but they rarely do so. Nor is it usual for the two associate judges to question the witnesses, although they have that privilege.

The addresses of counsel; submission of questions to the jury. When the witnesses have all testified, the public prosecutor delivers his address to the court and calls for a verdict of conviction. The counsel for the civil party and for the defense follow him in the order named. The prosecutor may then speak in rebuttal; if so, the counsel for the defense must be given the final word. The code expressly requires this, and it naturally gives the accused an advantage. As a rule the concluding addresses are not lengthy. The presiding judge does not “charge the jury” as in America; he does not sum up the case and call attention to the real points at issue. Nor does he instruct the jurors that they must bring in a simple verdict of guilty or not guilty. On the contrary, he submits to the jurymen a list of questions which they are to answer. Was the accused present when the crime was committed? Has his alibi been proved? Was the assault or homicide committed in self-defense? And so on. One of the questions he always asks the jurymen is whether, in the event of their finding the

defendant culpable, there were any extenuating circumstances. Sometimes the list of questions is long and complicated, and for this reason the answers which the jurors give are occasionally inconsistent with one another.

Reaching the verdict. The jury retires from the courtroom and frames its answers by majority vote, a secret ballot being taken on each question. When any matter requiring the advice of the presiding judge arises, it is not the practice (as in America) to march the jury back into the courtroom where the judge gives his explanation in public. In a French assize court, the presiding judge goes to the jury room, accompanied by the public prosecutor and the counsel for the accused. Not infrequently he has been summoned for the purpose of telling the jurors what penalty the court is likely to impose in case the answers are adverse to the defendant. This shows that French jurors have not caught the spirit of the jury system. They desire to do more than serve as an agency for the determination of the facts. The code of criminal procedure in France stipulates that a jury has nothing to do with penalties; but French jurymen have often insisted upon influencing penalties in a roundabout way.

Functions of the judges. On the basis of the jury's answers the three judges, after conferring, announce the verdict and impose the sentence. In case of disagreement among themselves the three judges decide by majority vote. In general they must act in accord with the jury's answers; but (as has been mentioned) if the jury votes six to six or seven to five on any question, the three judges are free to frame a verdict of acquittal (but not a verdict of conviction), provided they are themselves unanimous. The code of criminal procedure also stipulates that a lenient sentence must be imposed whenever the jurymen report that they have found extenuating circumstances. French juries have been rather partial to defendants. They have been inclined to deal leniently with offenses of a political character, crimes committed during labor troubles, and most of the *passionnel* offenses. This leniency, however, has been more evident in Paris and the other large cities than in the rural districts.

Appeals. From the verdict and sentence at the assizes an appeal may be taken on any issue of law, by either the prosecution or the defense, to the Court of Cassation. This court, under ordinary circumstances, has no power to set aside the verdict; it can merely order a new trial, and this rehearing takes place in some court of assize other than the one in which the original trial was conducted. In certain exceptional cases, however, the Court of Cassation may set aside the verdict of the assize without ordering a new trial.²¹

Merits of French criminal procedure. Thus a criminal trial in a French court is an investigation, not a battle between two opposing platoons of learned

²¹ For example, it did this in one case where a defendant had been convicted of murder and it subsequently appeared that the supposed victim was still alive.

counsel. The rule that questions must be asked through the presiding judge has had the effect of discouraging frivolous inquiries on the part of the defendant's attorneys. The practice of giving the presiding judge full discretion as to the range of admissible evidence has served to eliminate most of the long wrangles and "exceptions" which so often take place in the criminal courts of the United States. The requirement of a majority instead of unanimity in reaching a jury's decision on any point has the advantage of avoiding deadlocks. Furthermore, there is a good deal to be said for the French plan of submitting to the jury a series of definite questions as contrasted with the American practice of insisting upon a categorical verdict, for it gives the jurymen something specific to work upon. In America we say that juries determine questions of fact alone; but what we actually require them to do is to fix guilt or innocence, which is by no means the same thing.

Some obvious defects. On the other hand, there are some features of French criminal procedure which are wholly out of consonance with Anglo-Saxon legal traditions and would not be tolerated by public opinion in the United States or in England. In France the presiding judge is not a mere umpire but actively conducts the whole inquiry. An accused person cannot demand to be confronted by the witness against him. Written evidence may be received and accepted against him without giving him or his counsel an opportunity to cross-examine the authors of such evidence. All this should not be taken to mean that an accused person goes to trial in a French criminal court with the odds against him. Taking all features of the procedure together he gets as fair a trial as does the average defendant in the courts of the United States.²² Such American impressions as exist to the contrary are probably due to recollections of the Dreyfus case—but Dreyfus was convicted by a court-martial!

Civil procedure. The procedure in civil cases is necessarily different from that followed in criminal trials because juries are not used in civil controversies, nor is there a public prosecutor. Much of the evidence is submitted in writing. The *avoués* or lawyers on each side present their arguments to the judges who sit *en banc*, and the latter give judgment by majority vote. Civil trials move more rapidly in France than in the United States. This is partly because the French *avoué* is in general better trained than the average American attorney, but to a larger extent results from the wider discretion in matters of procedure which French judges enjoy. The right of appeal is more restricted in France than in the United States where the calendars of the higher courts

²² An interesting feature is that if, after conviction, new evidence appears indicating the innocence of the convict, the latter does not have to rely upon an executive pardon as in Britain and the United States. He has, of right, a hearing of his case before the Court of Cassation which may set him free or order a new trial.

often become badly congested. Finally, when a French court of appeal makes its decision, the judges are not required to write lengthy "opinions" in support of their action, as they are required to do in some American states. The French lean rather to the aphorism of an English legal writer who once suggested: "A court should never be required to give the reasons for its decision because even when a decision is right, the reasons will probably be wrong." At any rate, as American lawyers have found, they are likely to be confusing.

A volume in the Modern Legal Philosophy Series entitled *Modern French Legal Philosophy* by A. Fouillée and others (New York, 1916) gives the student a good idea of French legal philosophy in general. Mention should likewise be made of J. Parker, *Some Aspects of French Law* (New York, 1928); Sir Maurice S. Amos and F. P. Walton, *Introduction to French Law* (Oxford, 1935); and R. C. K. Ensor, *Courts and Judges in France, Germany and England* (Oxford, 1933). For those who desire to explore beneath the surface there are many treatises by French legal scholars—for example, J. Barthélemy, *Précis du droit public* (Paris, 1937). More recent developments in the legal system may be followed in issues of the *Revue générale du droit*. Some of these are discussed in L. Alexander, "French Law after the Liberation," *American Bar Association Journal* (June, 1949), 35:467-471. A compendious, annotated bibliography of French law in all aspects by Professor René David was issued in pamphlet form by the Cultural Division of the French Embassy in October, 1952.

CHAPTER XXX

Administrative Law and Courts

The French system of administrative law, and the very principles on which it rests, are quite unknown to English and American judges and lawyers.—Albert Venn Dicey

When the above comment appeared in Professor Dicey's notable volume on *The Law of the Constitution*, over sixty years ago, it was much more nearly in tune with the facts than it is today. In all countries, England and the United States included, there has been a great expansion of governmental functions during the past six decades. The hand of the state, as a regulating agency, has been reaching more and more into the economic and social activities of the people. While there are some who deplore this development, and feel that it is fraught with danger to the democratic ideology of government, there has been no way of avoiding it. The increased complexity of life in a modern state has necessitated governmental intervention in many fields, and this has required a great increase in the number of administrative officials. To do their work efficiently these officials must be given some measure of discretionary power, and this discretion may be used arbitrarily with consequent injustice to the private citizen. All countries, therefore, have had to devise something in the way of administrative law and administrative adjudication with an arrangement for the adequate protection of those citizens who may be adversely affected thereby.

A special branch of jurisprudence. This problem was encountered in France many years ago and a solution of it was sought, in general, by establishing a branch of jurisprudence known as administrative law (*droit administratif*) and tribunals which are called administrative courts. The ordinary laws and the regular courts are concerned with the administration of justice as between man and man, while administrative law is concerned with the adjudication of rights as between the citizen and his government.

The basis of administrative law. How did this distinction arise and what is the basis on which it rests? Well, to begin with, it harks back to the ancient

legal maxim that “the king can do no wrong.” This principle, or a principle derived from it, is still recognized in all countries—France, Great Britain, and America alike. The sovereign is the source of law; being the source of law he is above the law; hence he cannot wrong his subjects and is not liable to be sued by them. This doctrine was succinctly stated by Chief Justice Roger B. Taney of the United States Supreme Court in one of his decisions as follows:

It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals.¹

The justification for it. This principle continues to be recognized today in the United States because it embodies an essential of public policy. To follow a different rule and permit the sovereign authority to be sued at will by any individual for any reason would be intolerable. The public service would be hindered, and the public safety menaced, if the sovereign authority could be enjoined from action by any citizen at any time. Neither the United States, therefore, nor any state of the Union, can be sued by an individual without its own consent.

The theory is not rigidly applied. On the other hand, the nation and the states must exercise their sovereign authority through human agencies—through officials who are elected or appointed to do the work of governing. And these officials, being human, will at times make mistakes, display negligence, exceed their authority, act arbitrarily, and do injury to citizens or their property. A strict adherence to the principle that “the king can do no wrong” would lead to frequent and grave injustice. It would mean that the citizen must suffer wrong without redress. For this reason all sovereign states do, in fact, assume a varying amount of legal liability and permit themselves or their public officials to be sued under certain prescribed conditions.

How can the citizen be best protected against arbitrary acts of government? Then the question arises: How can this legal liability be safely assumed by the government? Should citizens be permitted to sue the state (or its officials acting under its authority) in the regular courts, or should special courts be provided for this purpose? Should the suit be brought under the general laws of the land, or in accordance with special rules established for controversies of this character?

The Anglo-Saxon answer to this question. England and America, through most of their history, have answered these questions in one way; France and other Continental European countries have answered them differently. Their answers, in both cases, go back to the fundamentals of their re-

¹ *Beers v. Arkansas*, 20 Howard, 527 (1857).

spective legal systems. The common law, upon which the jurisprudence of England and America rests, has always been intolerant of special privilege—especially on the part of those who are the agents of the government. It places upon the public official, be he governor, mayor, policeman, or inspector, the burden of proof that all his actions are fully warranted by law. No employee of the government, in England or the United States, enjoys immunity from the jurisdiction of the regular courts by mere reason of the fact that he performs a public service or wears a uniform.

The answer given by Roman law. But the Roman law, upon which Continental European jurisprudence is largely based, came at the matter from a different angle. It regarded the state as an end in itself, and the individual as only a means to the perfection of the great body politic.² Unlike the common law of England it did not regard the liberty of the individual citizen as the primary purpose of government. *Salus populi est suprema lex*. From this it naturally followed that those who served the state in an official capacity were entitled to special consideration.³ In other words, they should be subject to a special body of law and amenable only to a special system of courts.

Official liability in England and in America; equality before the law. In England or in America, if an individual feels aggrieved at the action of a public officer, he betakes himself to the ordinary courts and enters a suit, or asks for a writ of mandamus, or a writ of habeas corpus, or whatever the appropriate remedy may be. He may ask for a court order to prevent the making of an excavation in the street, the awarding of a contract, or the levying of a tax. He may get a writ of mandate (mandamus) ordering the election board to put his name on the voters' list or directing the building commissioner to issue him a permit. If his property is taken for public use, and he cannot get just compensation any other way, he goes right into the ordinary courts with his claim against the public authorities. There his claim will be adjudicated by a jury of his fellow citizens. All this is in conformity with the Anglo-Saxon legal principle that all officials save the very highest (and with certain exceptions

² This concept, it may be noted, was revived in an extreme form by the Fascist government of Italy. See below, Chapter xxxvi.

³ Joseph Barthélemy, in his *Gouvernement de la France* (Paris, 1919), argued that the system of administrative law was largely a spontaneous result of the French Revolution. The revolutionary authorities, he says, had to make attacks upon property and persons; the judges of the regular courts tried to protect the citizen; whereupon the government fulminated its prohibitions against them. They were forbidden to interfere with administrative acts. "Thus originated," he says, "the unfortunate principle of separating the administrative from the judicial authorities."

But the separation antedates the great upheaval of 1789. It was a logical outcome of two features which characterized the old régime in France, namely, the weakness of the courts and the overpowering strength of a centralized administration. Writing of the French judicial situation before 1789 Alexis de Tocqueville says that "in no other country were extraordinary courts more extensively employed." If France had possessed a system of common law, as in England, with regular courts strongly entrenched, it is not probable that the system of administrative law and courts would ever have come into being so early.

which will be presently noted) are subject to the ordinary laws of the land. The highest officials, in turn, are subject to impeachment.

Hence no dual system of courts. Both in England and in the United States, however, a public official is permitted to show that the wrong was not wilful, but occurred in the reasonable exercise of discretion given by law, in which case he is not held liable. And it should also be mentioned that there are, in the United States, certain special courts and commissions (like the court of claims at Washington) which exist for the purpose of adjudicating claims brought by private individuals against the government. But neither in England nor in the United States do the rules relating to suits against the nation, the state, or public officials form an extensive and separate branch of jurisprudence. Nor do the special courts make up a system of administrative tribunals distinct from the regular judiciary. The court of claims at Washington and the court of customs and patent appeals, as well as the tax court, are integral parts of the American judicial system.

The attitude of Continental European jurisprudence. But in France all public officials, of whatever rank, have been given a special status at law. For acts performed under color of their official duties they have not been held amenable to the ordinary laws of the land nor could they be brought before the regular courts. This situation has not been changed by any provision in the constitution of the Fourth Republic. If an individual believes himself to have been wronged by any official's bad judgment or arbitrary action he is entitled to seek redress, but he must seek it from special tribunals which are maintained for this purpose and which apply a special set of administrative rules.

A word of caution on this point. It should be made clear, however, that this immunity of public officials from the jurisdiction of the regular courts does not extend to anything done by them in a personal or nonofficial capacity. It does not even extend to acts performed in an official capacity if the injury results from the personal fault or personal negligence of the public officer. If, for example, a policeman makes an arrest in the course of his duty and in accordance with his instructions, he cannot be sued in the ordinary courts no matter how wrongful the arrest may be; but if he makes an arrest without color of right and in disregard of his instructions he may be dealt with like any private individual who lays himself open to a civil suit for assault.

Administrative law is case-law. Administrative law in France may therefore be defined as a system of jurisprudence which, on the one hand, relieves public officials from amenability to the ordinary courts for acts performed in their official capacity, and, on the other hand, sets up a special jurisdiction to hold them accountable. It is not embodied in a code, like the civil law. Some of the rules have been established by the issue of decrees, but in large part

they have been accumulated by the decisions of the administrative courts, especially by the decisions of the council of state. In this respect administrative law somewhat resembles the common law which has been slowly built up in the regular courts by one decision after another.

Its wide range. The French system of administrative law, built up in this way, covers a surprisingly wide range. It deals not only with the liability of the state and its subordinate divisions for injuries done to private individuals or their property, but with the rules relating to the validity of administrative decrees, the methods of granting redress when public officials exceed their legal authority (*recours pour excès du pouvoir*), the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between official and personal acts on the part of public officers, and many kindred matters. It gives redress in many cases where none would be available in the United States.

The attitude of the French people toward it. The whole system is well-knit and liberal in its attitude toward the individual. Frenchmen do not look upon it as a barrier to the assertion of their personal rights. On the contrary, they regard it as a palladium of their liberties, a protection against arbitrary governmental action. They are right in so regarding it, for it gives them a protection which otherwise they would not have. "It can now be said without possibility of contradiction that there is no other country in which the rights of private individuals are so well protected against the arbitrariness, the abuses, and the illegal conduct of the administrative authorities, and where people are so sure of receiving reparation for injuries sustained on account of such conduct."⁴

THE ADMINISTRATIVE COURTS

The administrative courts: 1. The regional councils. The principal administrative courts in France are the regional councils and the Council of State. The former replaced the old prefectural councils, of which there was one in each of the eighty-nine *départements* of France. Under the present arrangement there are twenty-two regional councils, each serving from two to seven departments. In addition, the Department of the Seine, because of its large population, has a council of its own. Each regional council consists of a president and four councillors, all of whom are appointed on recommendation of the minister of the interior.

Their jurisdiction and procedure. In general, the regional councils hear complaints made by individuals against the actions of administrative officials. For example, they deal with controversies concerning tax assessments, and in-

⁴James W. Garner, "French Administrative Law," in the *Yale Law Journal*, Vol. XXXIII (April, 1924), p. 599.

deed most of the matters which come before them are of this nature. Other questions over which they have jurisdiction are those relating to public works (especially highways) and the conduct of local elections. Complaints by the thousand come before the councils for adjudication every year.

2. The Council of State. The highest administrative court is the Council of State, which maintains a judicial section for this branch of its work. Perhaps it should be explained that in France a distinction is made between *cassation* and *appeal*. Higher courts may be asked to quash (*casser*) actions of the public authorities or to reverse decisions of the lower courts. The Council of State has not only a wide original jurisdiction but it also has powers of cassation in some cases and appellate authority in others. Appeals from the regional councils come regularly to it, or, more accurately, to that section of the Council of State which acts as a superior administrative court. Appeals are frequent, and they often result in a reversal of the lower decisions. The Council of State is a large body, made up of two elements, political and nonpolitical. The section of the Council which deals with administrative controversies consists of the thirty-five nonpolitical members, or *conseillers en service ordinaire*. These councillors are men of high legal attainment and have a reputation for impartiality and respect for individual rights. This is the case even though they are, in a sense, a part of the administration rather than the judiciary.

Its high place and prestige. The Council of State, in fact, has long occupied a place in the public esteem and confidence of the French which is somewhat analogous to that which the Supreme Court enjoys among the people of the United States. This is because its decisions have guarded the rights and interests of the private citizen, however humble, against encroachment by the public authorities. It has deemed no cause to trivial for its attention, provided some right of the individual appears to have been infringed. Until 1946 France had no bill of rights in her constitution, but the Council of State helped to make good this deficiency under the Third Republic by constituting itself a defender of the citizen against the abuse of governmental authority.

Value of its work. In fact, it has often granted to French citizens a measure of redress which no American could obtain from the regular courts of his own country. Time and again it has held that the individual who suffers loss through the negligence of the police is entitled to compensation from the public treasury. It has ruled that persons injured through the collapse of a building owned by the government (and used for purely public purposes) must be compensated. In a word, it holds that the state must pay for whatever damage its officers cause, through their official malfeasance or negligence, just as any private employer must make good the damage done by his agents within the scope of their employment.

French and American methods of redress to the citizen compared.

Those who are familiar with the principles of public liability, as applied in the regular courts of the United States, need not be told that no such generosity exists in this country. An American city, under the rules of common law, is not liable for injuries caused to the property of its citizens by the negligence of policemen, firemen, or health officers. You can sue the policeman in the regular courts (for all the good that it will usually do you), but in most cases the courts will not award you damages against the city which employs him.⁵ In the United States we take refuge behind the legal fiction that the "city is the agent of the state, and a sovereign state can do no wrong." The French method of dealing with such matters would seem to be fairer to the individual whose property has been injured. For after all it is better to sue in a special court, under special rules of law, and get redress than to have the more democratic privilege of taking your grievance before the regular courts where you get nothing.

Simplicity of the Council's procedure. There is no way in which acts of the public authorities in France can escape the surveillance of the administrative courts if any citizen chooses to file a complaint. And this he may do with very little trouble and expense to himself. Formalities and fees are at a minimum. All the aggrieved individual need to do is to present a petition on a stamped form, the cost of which is small, and even this is reimbursed if he wins his case.

The annulment of decrees. It has been mentioned that no court in France has power to declare laws unconstitutional. But this does not apply to ordinances and decrees—even when they are issued as supplementary to the provisions of a law. Such decrees may be annulled, no matter what their nature, or how lofty the personage issuing them. And it has been pointed out that a large portion of what we call "law-making authority" is exercised in France by the issue of these ordinances and administrative decrees. The Council of State may also annul the action of any subordinate lawmaking body, such as a general council or a municipal council, if it finds such action to be outside the scope of their authority. National laws alone are exempt.

Effects of an annulment. When the Council of State invalidates a decree or ordinance, it does not ordinarily award damages to anyone who has suffered injury by reason of the attempted *excès du pouvoir*, but its action permits the injured person to bring an action for damages and obtain an award. In the United States no redress can be had from the courts in such cases. If an American city council, for example, enacts an ordinance which later proves to be beyond the scope of its charter powers, the courts will invalidate the ordi-

⁵ In some states, however, the liability of the city for damages done through the negligence of its police and firemen has been established by statute.

nance; but they will not usually hold the city liable for any damages that may have been done to private property in the meantime. Again, the French citizen is better off by reason of his special system of administrative law.

A limitation on the Council's power. It has been said that the Council of State can annul any decree by whomsoever issued. But there are certain actions of the President of the Republic, taken on the advice of his ministers, which are not held to be decrees in this sense—*actes de gouvernement*, they are called, to distinguish them from ordinary presidential decrees or *règlements d'administration*. The former are deemed to be political in character, the latter administrative; but the exact line of demarcation between the two is not always clear. A presidential decree setting forth the methods of taking a census would obviously be an administrative act and hence subject to invalidation; but a decree appointing a new prime minister would be a political act and hence not open to review. The tendency of the Council of State has been to broaden the category of administrative decrees until, at present, almost all the actions of the president are held to be included.

The various grounds for annulment. The Council of State may invalidate decrees and ordinances on a variety of grounds. The most common among these is the annulment for *excès de pouvoir*, or, as we commonly express it, for being ultra vires (that is, beyond the legal authority) of the official or council issuing it. Decrees and ordinances may also be voided for what the French administrative courts call a misuse of power (*détournement de pouvoir*). In such cases the authority of the official to issue the decree is not questioned, but the manner of his exercising the authority is attacked.⁶ Annulment may also take place for irregularity in the form of the decree, but such invalidations are uncommon because all important ordinances and decrees are sent to the Council of State for scrutiny as to their form before they are promulgated.⁷

Why France needs her system of administrative law and courts. France is a republic with a highly centralized administration. Everything, as will be shown in the next chapter, heads up into the form of a pyramid. If her public officials were as free from judicial control as they are in England and America, there would undoubtedly be a great deal of arbitrary action. The system of administrative law and administrative courts is intended to serve as a counterpoise to this centralization. Something of the sort is bound to develop in any country if the government extends the scope of its functions too widely

⁶ For example, where the President of the Republic once dissolved a municipal council, on the advice of the minister of the interior, ostensibly because it was irregularly elected but in reality because it had quarreled with the prefect. The municipal code clearly empowers the president to issue a decree of dissolution, so that there was no *excès de pouvoir*; but there was a misuse of power because the dissolution appeared to have been ordered for an arbitrary reason.

⁷ See above, p. 394.

and accumulates too many responsibilities. Wider functions necessitate the employment of more officials, and the subordinate officials in this vast army of civil functionaries keep getting farther and farther away from the seat of power.

Conflicts of jurisdiction in France. With two sets of courts operating in the French Republic there must be at times a conflict of jurisdiction. In America there is one Supreme Court which has the last word in controversies both ordinary and administrative. In France there are two—the Court of Cassation, which is the tribunal of last resort in all ordinary cases (both civil and criminal), and the Council of State which is supreme in all administrative controversies. Neither of these two courts is superior to the other; each is supreme within its own sphere.

The Court of Conflicts. What happens, then, when these two supreme tribunals disagree? To settle such disagreements there is a Court of Conflicts which is composed of nine members, namely, the minister of justice as ex officio president, four judges delegated by the Court of Cassation, and four by the Council of State, plus an alternate from each court. The eight members choose one of their number as vice president. Normally he is the actual presiding officer, for the minister of justice seldom attends. The minister also appoints by decree a councillor of state and a member of the *parquet* of the Court of Cassation, plus two alternates, to argue the cases. When the two courts cannot agree as to the correct jurisdiction in any case, the matter is settled by this mixed tribunal. But they have not disagreed very often, as is proved by the fact that the Court of Conflicts has rarely had more than a half dozen cases to handle in any year.

Standard works on this subject are R. Bonnard, *Le contrôle juridictionnel de l'administration* (Paris, 1934); Honoré Barthélemy, *Traité élémentaire de droit administratif* (12th ed., Paris, 1930); Maurice Hauriou, *Précis de droit administratif et de droit public* (11th ed., Paris, 1927); and Gaston Jèze, *Les principes généraux du droit administratif* (3 vols., Paris, 1925-1930). The best known brief manual is the *Petit précis Dalloz du droit administratif*, of which several editions have been published. A book of considerable interest is Raphael Alibert, *Le contrôle juridictionnel de l'administration au moyen de recours pour excès de pouvoir* (Paris, 1926). Other books covering the control exercised over the civil service and administration are J. Spach, *Les suites de l'annulation d'une nomination, promotion, révocation, mise à la retraite* (Paris, 1936), and H. Welter, *Le contrôle juridictionnel de la moralité administrative* (Paris, 1929). Reference may also be made to the volumes by Paul Duez on *La responsabilité de la puissance publique* (Paris, 1927) and by Jean Appleton entitled *Traité élémentaire du contentieux administratif* (Paris, 1927). See also A. P. de Mirimonde, *A Cour de Comptes* (Paris, 1947). A full bibliography is included in the *Guide to the Law and Legal Literature of France* published by the Library of Congress.

Mention may also be made of Stratis Andreades, *Le contentieux administratif des états modernes* (Paris, 1934); John Dickinson, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass., 1927); William A. Robson, *Justice and Administrative Law* (London, 1928); and Ernst Freund, *Administrative Powers over Persons and Property* (Chicago, 1928), as well as the classic chapter on administrative law in A. V. Dicey's *Law of the Constitution*, which took a position on the subject which is now regarded as untenable. Leon Duguit, *Law in the Modern State* (New York, 1919) is an older work which still merits attention. For the history of the Council of State, see *Le Conseil d'Etat: livre jubilaire, publié pour commémorer son cent-cinquantième anniversaire*, 4 Nivôse, an VIII—24 décembre, 1949 (Paris, 1952).

CHAPTER XXXI

Local Government

Local institutions constitute the strength of free nations. A nation may establish a system of free government, but without municipal institutions it cannot have the spirit of liberty.—
Alexis de Tocqueville

The tenacity of local institutions. It is an aphorism of political science that governments develop greater stability in their lower than in their upper compartments. When revolutions occur, they usually begin at the top and proceed to transform the national government. They may also modify government in the middle, that is, in the states and provinces, districts and cities. But rarely do they have much effect upon government at the bottom—in rural hamlets, villages, and towns.

Some illustrations of this. Those who desire illustrations of this phenomenon in history will find plenty of them. The English civil war, for example, although it changed England temporarily from a monarchy to a republic, made few changes in the government of the boroughs and parishes. The American Revolution did not change the government of the New England town or the Virginia county. It takes a tremendous convulsion, social as well as political, like the French Revolution of 1789, or the Russian Revolution of 1917, to carry the process of reorganization down into the areas of local administration. Local institutions have a superior tenacity because they are usually the product of a long evolution in which they have been molded to the needs of the people and have become a part of the common life.

In France the structure of the national government has been changed many times during the past 165 years. Bourbon absolutism, First Republic, Directory, Consulate, First Empire, Restoration, Orleans Monarchy, Second Republic, Second Empire, Third Republic, Pétain's French State, Fourth Republic—they have all functioned within a little more than a century and a half. But in no case did these national changes since the close of the Revolution completely alter

the system of local government. The organization of the French department, *arrondissement*, and *commune* remains today in most essential features about as Napoleon I set it up. There have been many changes in procedure, of course, and it is much more democratic than it was at the outset. But in its general framework there has been hardly any change at all. Surely a scheme of local government which has withstood so many shocks must have a great deal of inherent value and vitality.

General merits of the French system. Unquestionably it has both. It is peculiarly well suited to the needs of a country in which the national government desires to retain close control over the local authorities. Centralization is the essence of the system; centralization carried to a high degree. Authority converges inward and upward. This convergence of supervision means that France has never given recognition to the principle that every city and county has a right to conduct its own affairs in its own way. Municipal home rule has had no favored place in French political philosophy. There is no division of powers between the nation and its parts. The French Republic is not a federation of eighty-nine departments; it is a unitary state which has been mapped off into artificial districts for the more convenient performance of governmental functions. The departments, in their turn, have been subdivided into *arrondissements* and cantons, but the divisions and subdivisions are mere creatures of the nation; they have no inherent powers. The minister of the interior at Paris presses a button—the prefects, subprefects and mayors do the rest. All the wires run to Paris.

Influence of the French local government system in other countries. England, during the nineteenth century, exercised a great influence upon the development of *national* institutions throughout the world. Every national government from Japan to Belgium paid homage to the English example. But France, to an almost equal degree, has demonstrated her leadership in the field of *local* government. Her scheme of prefects and subprefects has spread to the farthest corners of the earth. One finds it, very little changed, in Portugal, Belgium, Holland, Greece, and Italy. With various adaptations it is functioning in the Far East, in the Near East, and in the countries of Latin America.

Even in England and in America. Outside the English-speaking countries, therefore, the influence of France upon systems of local administration has been far reaching and profound.¹ Even in English-speaking countries the drift is steadily toward a greater recognition of those principles on which the French system of local government rests—uniformity, professionalism, paternalism, centralization. Both England and the United States have traveled far

¹ The two greatest contributions of France to the science of government are her *Code Civil* and her scheme of centralized local government. Both, it should be noted, were the work of the first Napoleon.

in all four directions during the past fifty years, and they are likely to keep on doing so. It is appropriate, therefore, that students of comparative government should know something about the circumstances under which this scheme of local organization was devised, and should appreciate the qualities which have given it a world-wide vogue.

Evolution of the French system: 1. Before the Great Revolution.

Until after the Paris mobs stormed the Bastille on July 14, 1789, there was no system of local government in France, although the country was divided into provinces which had at one time enjoyed a considerable measure of political independence. With the growth of the royal power the political importance of these provinces had dwindled to almost nothing. The chief administrative district in France was the *généralité*, over which ruled an intendant appointed by the king and responsible to him alone. The monarch spoke, and the intendant translated his words into action. Each intendant went about his district ordering, supervising, and controlling all matters of administration, justice, police, and finance. But there was no uniformity in the work of these officials, hence the character of the administration varied from one domain to another. They were all bureaucrats, however, and loyal to the interests of the king.

The hopeless diversity. Within the *généralités* there were smaller administrative areas known as communes, more than 40,000 of them, ranging from little hamlets to large cities and towns. During the middle ages these communes had secured and maintained their right to self-determination, but during the sixteenth and seventeenth centuries their municipal freedom was gradually curtailed until it vanished altogether. The monarchy, as it gained in strength, deprived the communes of the right to elect their own local officers and installed royal officers in their stead. This was done by different kings, however, and under a variety of circumstances, so that there was the greatest possible diversity in the methods of communal government. No two communes, indeed, were governed exactly alike; in some of them the local offices were sold by the crown to the highest bidder, in many they were made hereditary, in others the king appointed the incumbents for short terms. In only one respect was local government uniform before the Revolution, namely, in the complete absence of popular control over any branch of it.

2. The decree of 1789. Now the Great Revolution changed all this in short order. First, the Revolutionary Assembly issued a decree which abolished the *généralités* and divided France into eighty-three departments.² It further provided for the division of each department into *arrondissements*, and for

² This number was increased to eighty-nine in 1815, then reduced to eighty-six in 1871, and again increased to eighty-nine in 1918. It is now ninety-seven, including Corsica, Algeria (which has three) and the 1946 additions of Martinique, Guiana, Guadeloupe, and Réunion.

the division of these, again, into cantons. Within each canton the commune was to be the smallest area of local government.

Its drastic reorganization. Here was a scheme of geographical divisions made with a pencil and ruler, a whole nation plotted out just as a real estate promoter would do it, disregarding all considerations of history and sentiment. Save in the case of the communes all the new divisions were arbitrary creations, without local traditions, and often without inherent unity. In all of them, the commune included, the government was placed by the decree of 1789 upon an elective basis. Every official—in department, arrondissement, canton, and commune alike—was to be chosen by manhood suffrage. And the central authorities were to keep their hands off. The decree made no provision for the exercise of central control from Paris. The Revolutionary Assembly imagined that local democracy could be inaugurated and made to function successfully by a single stroke of the pen.

Why it failed. But history has proved on many occasions that you can no more give self-government to a nation than you can “give” character to an individual. Both have got to be earned, acquired, developed, and guarded with eternal vigilance. The decree of 1789 went too far and too fast. The French people were not prepared for so great and so sudden a change. As it turned out, therefore, they did not use their new freedom in a sober and judicious way. Abuses developed on every hand; onerous taxes were imposed by the newly elected governments; public money was spent wastefully; the communes ran into debt; the local police could not maintain order or enforce the laws, and the guillotines worked overtime. These abuses were so widespread and menaced the public security in such a way that the national authorities decided to curb the local freedom and stiffen their own central control.

3. The reaction of 1795 and the Napoleonic alterations. This they did in 1795 when the Revolution entered its second and more orderly stage. The principle of popular election was retained, but the local officers were brought under the supervision of Paris. A few years later, when Napoleon Bonaparte came into power, he carried the process of centralization a step farther by providing that all local officers should be appointed, not elected. Napoleon’s action (1800) took out of the system most of the democracy that the Revolution had put into it. So long as he remained in power there was no more local home rule in France than there had been under the Bourbons prior to 1789. Thus did revolution produce reaction, as it always does.

4. Since 1800. From 1800 to the present time the French system of local government has been made somewhat more democratic by republics and somewhat less democratic by kings. But the centralization which Napoleon established has never been greatly relaxed—not even after more than eighty years

of republican government. A description of French local government, written in 1875, would pass muster as tolerably accurate today. France has tried no radical experiments in this field during the intervening years.

THE DEPARTMENTS

Areas of local government: the departments. There are eighty-nine departments in France proper. These areas retain the boundaries given to them in 1789, which means that they are irregular in shape, size, and population. A map of the French departments looks like a jig-saw puzzle. Most of them are named after some river, mountain, or other geographical feature—thus the Department of the Seine, of the Rhône, of the Loire, of the Gironde, of the Alpes-Martimes, and so forth. The Department of the Seine (which includes Paris) is the smallest in area but the largest in population. The French departments bear no resemblance to the states of the American Union. Geographically, and in political status, they more nearly resemble the administrative counties of England. Being arbitrary divisions they had at the outset very little self-consciousness, but during the past 165 years they have managed to develop a considerable amount of it. Indeed it was Mirabeau's idea deliberately to break up the historic counties and duchies, Anjou, Normandy, and the rest, so that they could not oppose the centralized revolutionary authority. But by now the department has become a "historic" unit in France with some sense of community. Modern methods of communication have made it, in effect, a much smaller division than it was in Napoleon's time.

The executive head of the department: the prefect. The executive head of the department is an official known as the prefect.³ He is appointed for an indeterminate term by the President of the Republic on the nomination of the minister of the interior. Formerly the minister had practically no limitations placed upon his choice and, what is more, could promote, demote, and transfer prefects at will. The minister's choice tended to fall upon men who were his faithful political adherents and who could be counted upon to work hard and use all their influence and patronage to promote the election of deputies of the correct political persuasion. This, rather than administrative skill and experience, was often the controlling factor in a prefect's appointment. Once appointed, a prefect might expect promotion to a more important department because of his political rather than his administrative services.

While it cannot be said that the prefect is now entirely neutral politically, it is true that he more resembles the civil servant he was always, in theory, supposed to be. The reasons for this change are several. In the first place, the

³ This title was borrowed from ancient Rome, in which there was a *praefectus urbi* who served as the emperor's right-hand man.

minister of the interior is now limited in his nominations to those who have educational qualifications equivalent to the standing demanded of candidates for entrance to the National School of Administration.⁴ This amounts to a college degree and is less common in France than in the United States. Incidentally, the would-be prefect may not be an elected official or must resign his elected office to be eligible for appointment. Secondly, all prefects are now divided into three classes except for a very few of the oldest and most experienced, who are "*hors classe*."⁵ Nowadays a prefect is often promoted from the position of subprefect. To begin with, he is made a third-class prefect and may hope in time to be promoted to the second class and eventually to the first class. Under this system the minister cannot assign a prefect arbitrarily to a post properly belonging to a prefect of a different class. Also, a certain minimum of promotions must be made within the prefectural corps, which rule further limits ministerial appointments. Nor does today's prefect enjoy the large patronage powers of his predecessors. Many of his appointments are now covered by civil service rules and are not available as political patronage.

Altogether the net result of these reforms has been to make the prefect more the career civil servant and less the political henchman.⁶

The superprefects. At the suggestion of the minister of the interior, Jules Moch, a law of March 25, 1948, was passed creating the new office of superprefect. All the departments were grouped into eight regions and a superprefect appointed for each. The regions are based on the military districts and were created following a series of disorders and strikes among the French miners. It would appear that the superprefect is a kind of inspector-general for the group of departments within his region and that he is mainly concerned with the coördination of police activities.

The prefect's headquarters and staff. Each of the departments has its capital or chief town, with an imposing structure known as the prefecture.⁷ Above its main doorway is emblazoned the ubiquitous *Liberté, Égalité, Fraternité*; and from its flagstaff floats the tricolor. In this building the prefect has his residence and his offices. Here, also, are the offices of the prefectural staff, which consists of the prefect's confidential assistant (*chef du cabinet*), his secretary-general, and various other high functionaries.⁸ All are appointed by the authorities at Paris. In addition there are various directors of divisions

⁴ Required by an ordinance of November 2, 1945.

⁵ A law of June 19, 1950, reorganized the corps of prefects.

⁶ An article on the development of the prefectural office by M. Queuille appeared in *Cahiers français d'information*, issue of August 30, 1950.

⁷ In the Department of the Seine (Paris) it is known as the Hôtel de Ville. This department, as will be explained later, has two prefects.

⁸ The *cabinet du préfet* is largely political in function, while the secretary-general is the manager who supervises the work of the various offices.

and bureaus, together with a host of clerks and other employees. The laws regulate the method by which all these subordinate officials are chosen, and they also prescribe the technical qualifications in each case. There is no spoils system, as we have had it in the United States, for the general qualifications are such that the ordinary political henchman cannot fulfill the legal requirements. As a rule the higher positions are filled by promotion from below, and although political influence counts for a good deal in determining these promotions, it is by no means the chief consideration.

His dual position. The prefect occupies a dual position. He is primarily the local agent of the central authorities at Paris; he is also the executive head of his department. Powers and duties accrue to him in both capacities. As the agent of the central government he is responsible for the promulgation and enforcement of the national laws within his department. Likewise he promulgates minor decrees (*arrêtés*) on his own account.⁹ He has charge of the various public services insofar as they operate within his jurisdiction—main highways, bridges, jails, poorhouses, and hospitals, together with certain phases of public health and sanitary work, education, the drafting of recruits for the army, the taking of the census, the maintenance of public order, the tobacco monopoly, censorship—the list, if given in full, would cover a whole page. In the exercise of these functions he enjoys plenary police powers, including the powers of the *police judiciaire*. On behalf of the national government he appoints a large number of officials including schoolteachers, postmasters and postmen, collectors of taxes, and sanitary inspectors. In making these appointments he must abide by the laws and decrees which fix the qualifications of the appointees; but he has some discretion, and in its exercise is influenced usually by the recommendations of ministers and deputies. The only local officials not under his supervision are the judges.

Supervisor of municipal administration. The prefect is also entrusted with the function of keeping a watchful eye on the government of the communes or towns. The annual budgets of these municipalities must be submitted to him for approval; he appoints some of their officers; he can even suspend a mayor or a municipal council for cause.¹⁰ He may issue orders to the mayor of a commune on any matter connected with municipal police administration. In most of this work the prefect is governed by instructions which come to him from the ministry of the interior, or, in some cases, from one of the other ministries. Sometimes these instructions are detailed and explicit in character, for in matters of nation-wide concern it is desirable that all the prefects should act alike. But as respects the special problems which arise from time to time in his own

⁹ His decisions can be annulled by the minister of the interior or by other ministers insofar as he is representing them.

¹⁰ Subject to a review of his action by the Council of State. See above, p. 497.

department the prefect is generally permitted to use his discretion. If he is in doubt he gets into touch with the ministry by long distance telephone.

As local agent for the national government, *M. le Préfet* is also something of a politician, even if not as active in this role as he used to be. In any case he is still the government's general intelligence officer. His periodic reports to the minister cover the life of his department in minute detail, as to its politics, economics, and almost everything else.

Its origins explain the office of prefect. To understand the curious combination of administrative supervision and political bossism that still characterizes the office of prefect, it is necessary to bear in mind that Napoleon created this official in his own image. In each department he wanted a general manager who could be relied upon to run the affairs of the department in every respect as the emperor wanted them run. Naturally the prefect as deputy-emperor did not harmonize perfectly with the institutions of a democratic republic. And at long last the Fourth Republic has begun to take him out of party politics and at the same time has given a little more autonomy to the locally elected authorities.

The prefect and the general council. As executive head of his department the prefect prepares all business for the general council. This body, as will be indicated presently, is the elective legislature of the department, but it is forbidden to deal with any matter which has not been laid before it by the prefect. The latter, in this connection, is more than a prime minister, for he has the sole right of initiative. To the general council he submits each year a budget of proposed local expenditures, and this budget is passed with such changes as the council may decide to make. But the appropriations, after they are made, stand wholly within the prefect's control; the council has no share in spending them.

The council does not control him. On various other matters the general council may pass resolutions and these, if they are within the law, the prefect carries into effect. But the council no more controls the prefect in France than the legislature controls the governor in the American states. In both cases it is desirable that the executive shall work in harmony with the legislative body, because the latter controls the appropriations; but this does not mean that the executive occupies a dependent position. The general council cannot remove a prefect, or reduce his salary, or curtail his powers. When the two come into conflict, as they sometimes do, the deadlock is resolved by an appeal to Paris.¹¹ The President of the Republic, on the advice of the minister of the interior, has power to dissolve the general council and to order a new election. Or, if the

¹¹ The prefect can ask the Council of State to annul an illegal act of the general council.

fault seems to lie with the prefect, he can transfer this official to some other department.

Importance of the prefect's office. The prefecture as an institution is one of great importance in France, because the entire system of local government is clearly pivoted on it. Its technical mechanism runs with the precision of an airplane motor. Cabinets at Paris flit in and out of office; ministers abide their destined hour and go their way; but the prefects and their subordinate officers maintain the whole administration as a going concern. France might change from a republic to an empire with very little effect upon the life of the average citizen; but let the nine-seven prefectures be abolished and the country would be in chaos within a week.

What he does for you. "Just get yourself born in France," the saying is, "and the prefect will do the rest." Yes, the prefect or his subordinates will give you a birth certificate (*acte de naissance*); they will certify you for admission to school, guard you in person, property, and health, grant you permission to marry—they will even perform the civil marriage ceremony. They will tell you when your turn comes to serve in the army, count you in the census, enroll you as a voter, take care of you if you become sick or insane, and issue the burial permit when you die. Even more, they will bury you, for the funerals in France are conducted by the public authorities. The prefect is the little father of his people, the central figure in this seamless web of administrative paternalism. In the person of this all-pervading functionary the shadow of the Great Corsican still hovers over every corner of the land. The billboards everywhere are plastered with the prefect's *affiches*, his decrees which regulate all manner of things from traffic on the highways to the price of cigarettes. Nothing seems too inconsequential for a prefect's decree. They fly from his pen like sparks from a blacksmith's anvil. He is an omnipresent as Providence—and his ways are sometimes as inscrutable.

He is in a difficult place. For eighty years the French Republic had been trying to harmonize local self-government, as embodied in an elective council, with rigorous centralization as it is enshrined in the prefect's office. This means that the prefect must go through gestures of deference to the public opinion of his department while actually defying it in accordance with instructions from Paris. It is small wonder that he often fails to satisfy either of his two masters. As a buffer between bureaucracy and the crowd the shocks come to him from both directions. "The agent of the government," says Hanotaux, "and the tool of a party, he is also the representative of an area which he administers. He must remain impartial, foresee difficulties and disputes, remove or mitigate them, conduct affairs easily and quickly, avoid giving offense, show the greatest discretion, prudence and reserve,—and yet always be a



Drawn by Theodore R. Miller
France Showing the Departments

cheerful, open, and good fellow; he must be always accessible, speak freely, and be neither affected nor churlish; . . . he must pay attention to and conciliate all the opinions, interests, and jealousies which rage around him."¹² A rather stiff set of specifications for anyone to fulfill, one would think.

THE GENERAL COUNCIL

The general council of the department. The general council of the department is made up of councillors who are elected by the voters for a term of six years, one half of them retiring triennially. The largest general council (with the exception of the Department of the Seine) has sixty-seven members; the smallest has only seventeen.¹³ The general council meets regularly twice a year at the chief town of the department, but may be called in special session when necessary. When the council is not in session it leaves an executive committee to exercise routine functions on its behalf. This committee is required to meet at least every month but it sits in almost continuous session.

Its functions. In a broad way the general council serves as the legislative body of the department. It has much to do with the regulations relating to poor relief, public buildings, and most perplexing of all, the traffic rules. But its legislative powers are narrow for three reasons: first, because nearly all important matters are dealt with by national decrees; second, because the general council is forbidden to take up any "political questions" (a term which has been given a very broad interpretation); and third, because its actions may be overruled by the central authorities at Paris. In addition, as has been pointed out, no matter can be taken up by the council except on the prefect's initiative. Of late years the general councils have been given somewhat greater liberty of action, and they are now beginning to serve, in a limited way, as departmental parliaments.

The departmental budget. The chief function of the general council is to vote the annual budget of the department.¹⁴ This budget is tentatively prepared in the office of the prefect and submitted to the council at one of its regular sessions. It is then discussed, item by item, and changes may be made in it by majority vote of the council, but such changes are subject to veto by the national government. When the budget has been finally approved, the council figures out the amount of revenue needed. Then it apportions among the various *arrondissements* the sums of money required to cover the total expenditure. The council is also supposed to examine the accounts of the prefecture,

¹² Gabriel Hanotaux, *L'Energie française* (Paris, 1902), pp. 129-131.

¹³ In the Department of the Seine the general council is made up of the municipal council of Paris, which has ninety members, together with sixty members from the suburban *arrondissements*.

¹⁴ The budget provides funds for the maintenance of the prefectures, the courthouses, the prisons, and other institutions of correction, besides various roads and bridges.

but this task it invariably refers to a committee. With actual administration the council has nothing to do, but various questions of administrative policy are submitted to it by the prefect from time to time. Finally, the members of the general council (as elsewhere pointed out) constitute a section of the electoral college which chooses the senators from the department.¹⁵

Legal status of the department. French writers often lay stress on the fact that the department is not a mere administrative district but an area with a corporate personality, with the right to sue and be sued, to hold property, and to make contracts. In a legislative sense that is true, but it does not alter the fact that the French department does not enjoy as much home rule as an English county. Its officers have no final authority. It has the forms of self-determination, that is all. Its people elect the members of the general council, but this body does not control the executive branch of departmental government. The principle of executive responsibility has not been extended to local government in France as it has been in England.

Proposals for reform. A system of centralized local government can be made efficient, but it is rarely popular with the people whom it serves. In France the *tutelle administrative* is continually under fire.¹⁶ Its critics are fond of quoting the old maxim that "centralization produces apoplexy at the brain and paralysis at the extremities." They complain that it clogs the central mechanism and deadens popular interest in local affairs. As for the prefect, his office is the target of a continuous fusillade, and it can hardly be otherwise so long as he is compelled to run with the hares while he hunts with the hounds. It is not improbable, indeed, that the prefect's office would have been abolished long ago if Frenchmen had been able to agree upon something to put in its place. During the past fifty years there have been numerous proposals to consolidate the geographical departments into a much smaller number of "regions," each with a real legislative body and a responsible executive. Measures of this character have been repeatedly brought forward in parliament, but no one of them has as yet survived the initial stages there. Nevertheless, regionalism still has vitality in France, and some day the movement may prove successful.¹⁷

The difficulties in the way. To an outsider it does not seem that a mere geographical rearrangement would accomplish much. The root of the trouble does not lie in the fact that the departments are too numerous or too small. There are communities in the United States, not half the size of the French departments, which have a very large measure of local home rule. The trouble does not arise from the map of France but from the traditions of the French.

¹⁵ Above, p. 401.

¹⁶ P. Larogue, *La tutelle administrative* (Paris, 1931).

¹⁷ See R. K. Gooch, *Regionalism in France* (New York, 1931), especially chap. iv. Economic regions were discussed by the Vichy government, but no action was taken.

The old régime which came to an end in 1789 was paternal and centralized in the extreme. The psychology of the people had become so habituated to paternalism and centralization that it could not be transformed overnight, as the revolutionists imagined. During the past 165 years there has been some progress toward decentralization, and this might well be speeded up. But there are three reasons why it cannot easily be accelerated, and the first is the fact that the masses of the people in the rural districts are making little clamor for it. Although there is fairly constant criticism of central control, the issue is not a burning one. Secondly, reform proposals have always encountered the solid opposition of the army of *fonctionnaires* who fear that their vested interests may be disturbed. Thirdly, the ministers and deputies are not anxious to lose such local patronage as they still control.

Proposed reforms of the Fourth Republic. The constitution-makers of the Fourth Republic responded to desire for more self-government at the local level by including, in Articles 85 to 89, a statement of the general principles which should apply to local government. Article 87 says "the local administrative units shall be governed freely by councils elected by universal suffrage," and Article 89 contains a promise: "Organic laws will further extend the liberties of the departments and municipalities." None of these provisions is self-executing and any change from the old order of things can be accomplished only through laws passed by the National Assembly. There was some apprehension on the part of the Center parties that Article 87 might mean the abolition of all central control via the prefect, so Article 88 was added specifying the existence of national delegates within the departments to ensure the representation of national interests and the "administrative control of these units," that is, to do just what the prefect had always done. And so, up to the present, a description of the local government in the Third Republic serves with minor changes for the Fourth Republic as well. A bill was actually introduced in May, 1947, which would give the budget preparation and executive powers to the president of the general council of the department and thus reduce the prefect to the position of watchdog for the national government. This mild extension of municipal "home rule" has not yet been acted upon, owing to the reluctance of French ministries to relax their hold upon local government.

THE ARRONDISSEMENTS

The arrondissement; the subprefects. The departments, as has been said, are divided into arrondissements. They do not bear designatory names, like the departments, but are numbered—first, second, third arrondissement. Each is a department in miniature, with an appointive subprefect and an elective council. Of themselves the subprefects have no independent powers, or al-

most none. They are merely the channels through which the prefect obtains information and transmits his orders—the prefects' "letter boxes" they are sometimes called. The chief reason for their existence may be found in the simple fact that no prefect can attend to all the details of local government. The subprefect relieves him of minor functions, both administrative and political.

What they do. The subprefecture, accordingly, is a busy place with a considerable staff and a large amount of clerical work to be done. The subprefect is responsible for a vast amount of daily routine; in addition he spends a portion of his time in political activities. For these 279 subprefects are not only the fingers but the eyes and ears of the ministry.

The arrondissement councils. The council of the arrondissement has little more than nominal functions to perform. It makes no laws and votes no money. Until a few years ago it had the duty of allotting the departmental tax quotas among the communes, but even this perfunctory task has now been taken away. Formerly the councillors of the arrondissement were members of the electoral college for the Senate. They do not have this function in connection with the Council of the Republic. Unlike the department on the one hand and the commune on the other, the French arrondissement is not a corporate entity and owns no property. It is a purely administrative unit.¹⁸

THE COMMUNES

City, town, and village government. Finally, there is the commune. It is the only area of local government that antedates the Revolution. The American mind, filled as it is with distinctions between townships, villages, towns, boroughs, and cities, finds difficulty in grasping what a French commune really is. The French municipal code defines it as "any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognized by any subsequent law or decree." As a matter of fact the term includes everything that would be called a municipal corporation in the United States—whether city, town, village, or township. A commune is any French community, big or little. Marseilles is a commune; so are Lille, Bordeaux, Toulon, and Lyons; so is Château-Thierry; so is every little hamlet in which American troops were billeted during both World Wars. Some of these little communes have fewer than fifty inhabitants.

All created equal. All in all there are about 38,000 communes in France. Each is governed under the provisions of the same municipal code.¹⁹ This in

¹⁸ Each arrondissement is divided into cantons, but the canton likewise has no corporate organization. It is merely a geographical division, a sort of enlarged ward, which serves for various electoral and judicial purposes. Each has a *gendarmerie* headquarters and a justice of the peace.

¹⁹ The best commentary on the French municipal code is Léon Morgand's *La loi municipale* (2 vols., Paris, 1952).

some ways is a serious defect; for a city is a good deal more than a village writ large. Its problems differ not only in extent but in character. The French government has recognized this to some degree by providing the bigger communes with larger municipal councils and some additional administrative machinery, while holding broadly to the principle of uniformity.

Their frame of government: 1. The council. The government of the commune is a relatively simple affair, as local governments go. Each commune has a municipal council of varying size, depending upon its population. The councillors are elected for a six-year term and serve without pay. Communes with fewer than 9,000 inhabitants use the list system with a majority required to elect on the first ballot and a second vote with a plurality winning if no majority is obtained the first time. Larger communes use the straight "highest average" list system. This municipal council is the dominating factor in local government, for it not only makes the appropriations but elects the mayor and the other officials who have the spending of the money. Some of its powers, however, are limited by the supervision of the prefect. In addition, it serves as an important part of the electoral college for the Council of the Republic.²⁰

2. The *maire*. The first duty of a newly elected municipal council is to choose a mayor (*maire*). This it must do from within its own membership. The mayor is chosen to hold office during the same term as the council; and although serving as chief executive of the commune, he continues to be a member of the council and acts as its presiding officer. There is no separation of executive from legislative functions in the French city. Invariably the mayor is a man who has already served one or more terms in the council and has become a recognized leader in his work. Sometimes the municipal campaign turns on the issue of re-electing or not re-electing the mayor.

3. The *adjoints*. The council of the commune also selects, from within its own membership, one or more *adjoints* or assistant mayors, who hold office for six years but continue to be regular members of the council.²¹ The mayor, the assistant mayors, and the councillors all sit together and constitute the government of the commune. The only difference between the smaller and the larger municipalities is that the latter have more *adjoints* and bigger councils. There is no difference in the powers of the various municipal authorities or in their relations to one another. So, if you describe the government of one French city, your description will serve for them all. The American student of municipal in-

²⁰ See above, p. 401.

²¹ In the smallest communes there is one assistant mayor; communes of from 2,500 to 10,000 population have two; those of 35,000 have three and so on. The largest communes have twelve, with the exception of Lyons which has seventeen. Paris, as will be seen later, has no *adjoints*; it has two prefects and twenty *maires*.

stitutions need not be reminded that nothing of that sort is true in his own country.

Powers of the mayor. Although the mayor of the French commune is not an independent executive officer like the American mayor, he is by no means a figurehead. He has considerably more authority than the mayor of an English borough. Between the American and the English mayor, in other words, he stands midway. The council elects him (as in England), but thereafter it cannot remove him, nor has it any direct control over his actions. Still, this lack of direct control is not a matter of much practical importance for two reasons: first, because the council does not choose a mayor unless it is reasonably certain that he will work in harmony with it, and, second, because the mayor has no way of getting money unless the council gives it to him. Even the money to pay his own official expenses must come in that way.²² So, although he may not be a responsible executive in the ordinary sense, he is under bonds for good behavior.

1. As the agent of the higher authorities. The French mayor, like the prefect, occupies a dual position. In some matters (for example, in matters relating to police, public health, finance, the taking of the census, and the application of the laws relating to military service) he is the agent of the higher authorities. As such, he has broad police powers. Decrees go from Paris to the prefects of departments, from the prefects to the subprefects, and from the subprefects to the mayors. The mayors then promulgate them to the people. When necessary, the mayor issues his own local edicts supplementing these decrees. The higher authorities may suspend or remove a mayor from office if he fails to carry out their instructions.

2. As the chief executive of the commune. On the other hand, the mayor performs various functions as the chief executive of his commune. In this capacity he carries out the resolutions of the municipal council. He appoints the local administrative officers, prepares the budget for submission to the council, and tries to keep the administration of his commune running smoothly. In the larger municipalities he distributes some of his responsibility among the *adjoints* or assistant mayors. To one he gives the function of looking after streets, another takes charge of fire protection, another of sanitation, and so forth. In this way the assistant mayors serve as titular heads of departments. But they do very little real work in connection with the departments for which they are technically responsible. They leave the work to the professional administrators who are paid for doing it. When the mayor is absent, an *adjoint* serves in his

²² The mayor receives no regular salary but the council is permitted to vote him, each year, an allowance for expenses. This "allowance" in the larger communes is virtually equivalent to a salary.

stead. The mayor does not choose these assistants, and cannot remove them, but he can take an *adjoint's* duties away and leave him unattached.

The permanent staff. Neither mayors nor assistant mayors are professional administrators. They are laymen, elected by the people and then appointed by the council. They receive no salaries from the municipal treasury and hence can give only a portion of their time to the public service. It is true, of course, that the practice of re-electing *adjoints* gives them more familiarity with the affairs of the commune than one customarily finds among the elective officials of American cities, but they do not attempt to manage the business of the municipality upon their own knowledge. The actual work of city administration, in France as in England, is performed by permanent, expert officials who are appointed on the basis of qualifications prescribed by law. This does not mean that local politics play no part in such appointments or in the making of promotions. They do, to a considerable extent. But no amount of political influence will avail to give any man an important post of administrative responsibility in a French city unless he has the technical qualifications which are laid down by the local civil service regulations.²³

Layman and expert. Ostensibly the French city is governed by laymen; in reality the administration is dominated by experts. Prominent among these is the *secrétaire de mairie* or city clerk. In the small communes he is usually the local schoolmaster; in the larger ones he is a full-time official who takes a large part of the mayor's responsibilities off his shoulders. Every municipal service in the larger French towns (public works, sanitation, health, and so forth) has its full staff of professionals, and together they form a very efficient administrative machine. There are no loose ends in French municipal government.

The work of the council. The French municipal council, unlike the council of an English or American city, does not meet once a week or once a month. Like a legislature it holds its sessions day after day until the business is finished, and then takes a long recess. As a rule there are four sessions a year, each lasting from two to six weeks. Its powers, according to the municipal code, are of the widest extent. "The council," in the words of this enactment, "regulates by its deliberations the affairs of the commune." Nothing could be much more comprehensive than that.

The prefect keeps a close eye on it. But as a practical matter, the authority of the council is emasculated by the necessity of obtaining the prefect's approval for many of its decisions before they become valid. In the field of municipal finance, particularly, this requirement operates as a great restriction upon its powers. The national government deals out authority with a generous hand

²³ On the workings of the civil service system in a French city (Bordeaux) see Walter R. Sharp, *The French Civil Service* (New York, 1935) chap. xiii.

but it cuts the cards. Broadly speaking the council takes the initiative in most matters of municipal government except finance, police, and education. It may adopt resolutions relating to various questions of municipal policy and if these are not annulled by the higher authorities, the mayor and his adjoints see that they are carried into effect. Prefects and subprefects everywhere keep a watchful eye on all the municipal authorities.²⁴ But their interference is not as frequent as it used to be.

French cities have been well governed. Whether by reason of this prefectorial supervision, or in spite of it, French cities have been well governed. They have been better governed, on the average, than the cities of the United States. The city's money has been honestly spent, and good value has been obtained for it. The grosser forms of malfeasance and peculation, which have not been uncommon in the cities of the United States, are virtually unknown in France. Contracts are fairly awarded to the lowest bidder; the spoils system has been kept in control; the officials of the various departments have been given security of tenure; and the police have remained reasonably honest. It is sometimes said that French cities are unprogressive, that they let their affairs travel in a rut and are slow to adopt new methods. There may be truth in this allegation; but it is to be remembered that French cities have been growing very slowly and hence have not had need for much replanning or for large reconstructions in their public services. The French temperament, moreover, is not given to exuberance over anything for the mere reason that it is new.

The government of Paris. A word should be added with reference to the government of Paris. The French capital is under a special dispensation, and there are several reasons for its being so placed. Paris is the largest city in France, five times as large as its nearest rival, Marseilles. It is the seat of the national government with an enormous amount of national property within its bounds, including legislative and executive buildings, museums, libraries, palaces, and public monuments. Paris, moreover, has been a traditional focus of disorder. It is the point from which all the revolutions and *coups d'état* have emerged. History is to a nation what memory is to man—and a burnt child dreads the fire. Although Paris has never contained more than 10 per cent of the French population, the city has been the starting point for at least 90 per cent of the nation's political vicissitudes. The city on the Seine is both the head and the heart of France. The Fourth Republic takes no more chances on its good behavior than did the Third.

The two prefects and the municipal council. Paris virtually covers a whole department, the Department of the Seine, and is governed as such by a

²⁴ The Council's decisions do not go into effect for fifteen days after adoption, to give the prefect or subprefect time to examine into their legality.

prefect. Unlike the other ninety-six departments, however, it has an additional prefect, known as the prefect of police, whose function is the maintenance of law and order. Both prefects are appointed by the President of the Republic, acting upon ministerial advice. There is also a municipal council of one hundred and fifty members, ninety for Paris proper, and sixty for the suburbs within the Department of the Seine. The president of the municipal council is sometimes called the "Mayor of Paris." Actually there is no such office; the two prefects between them perform the functions of a mayor.

The Paris wards or arrondissements. Paris, therefore, has no mayor in the American sense. But the administrative heads of the twenty arrondissements are called mayors, although they are in reality subprefects. They are chosen in the same way as subprefects and have similar functions. A large portion of the city's routine work is performed at the headquarters or *mairie* of each arrondissement and is not concentrated at the city hall as in American cities. This attempt to combine the government of a city with that of a department has resulted in the creation of a curious hybrid. There is a centralization of power and a decentralization of functions. The prefect of the Seine is the dominating factor in Parisian government, but like all the other prefects he is merely the agent of the ministry.²⁵ The city council votes the budget, and it has some other important powers; but it does not control the city administration.

The French capital, like the American, wants home rule. Many Parisians are dissatisfied with this arrangement and there has been a persistent clamor for a greater degree of metropolitan home rule. Thus far, however, the clamor has availed nothing because the French parliament is made up, for the most part, of senators and deputies from the rural areas and small towns who look upon the capital with suspicion. Their attitude toward the City of Light continues to be a strictly bucolic one. Recollections of barricades, jacqueries, the Red Terror, and the Commune still haunt the rural French mind. "Paris belongs to France," they say in the provinces, "and France must control its administration." This might sound strange to American ears were it not for the fact that precisely the same doctrine is applied to Washington.²⁶ The Department of the Seine is not allowed to manage its own affairs, neither is the District of Columbia—but that is another story and one which does not belong in this book.

Lyons and Marseilles. The two other largest cities of France, Lyons and Marseilles, also have or had special municipal arrangements. Lyons has a central municipal council and mayor, but is divided into seven arrondissements, each with a mayor and two *adjoints* but no council. Police powers within the

²⁵ He has one peculiar privilege. Alone among the prefects he may call upon the minister of the interior without special permission.

²⁶ Except that Parisians are not deprived of the vote.

city are divided between the mayor and the prefect of the Rhône. Marseilles was highly centralized on the eve of the Second World War. Its mayor was abolished and the prefect of the Bouches du Rhône presided over the municipal council. After the war, however, Marseilles was again given the normal government of mayor, *adjoints*, and municipal council like other cities.

The subject of French local government in its various phases is fully treated in all the standard works of French administration (see above, p. 564). Léon Morgand's *La loi municipale*, (2 vols., Paris, 1952) is the most useful book on the government of the commune. There are eight chapters on French municipal government in William B. Munro's *Government of European Cities* (revised edition, New York, 1927), pp. 205-336. A full bibliography is there appended (pp. 413-423). Mention may also be made of M. Felix, *Petit dictionnaire de droit municipal* (Paris, 1926), and M. Leroy, *La ville française: institutions et libertés locales* (Paris, 1927). See also P. Demondion, "La Loi Municipale et les Communes Françaises en 1950" in *La Revue Administrative* (September-October, 1950).

The situation at the close of the Third Republic is treated by Walter R. Sharp in his article "France" in *Local Government in Europe*, W. Anderson, ed. (New York, 1939), pp. 107-222. Subsequent developments are discussed in *Public Administration* (spring, 1947) in an article by V. D. Lipman, "Recent Trends in French Local Administration." The latest and most complete work on the prefectural office is Pierre-Henry, *Histoire des préfets* (Paris, 1950).

CHAPTER XXXII

France as a World Power

*Gay sprightly land of mirth and social ease,
Pleased with thyself, whom all the world can please.—Goldsmith*

Greater France: her area. France, like Great Britain, is a world power, with possessions scattered all over the globe. The European territory of France covers a little more than 200,000 square miles, which is less than the area of Texas. But the tricolor flies over more than 1,000,000 square miles outside Europe—in Africa, in Asia, and in America.

Her population. The population of France herself is about 42,000,000; but the French overseas possessions, including Algeria, the colonies, the protectorates, and the mandated territories, have a combined population which is estimated to be in excess of 77,000,000. Apart from the commercial possibilities which may be available in these varied possessions, this reservoir of manpower has been of importance to France because it has served to counterbalance, in some degree, the numerical weakness of the French in Europe. The failure of her own population to grow at the rate maintained by her neighbors has long given France a serious problem in connection with her desire for security.¹

France and England as colonial powers: the analogies. France and England, as colonial powers, afford some interesting analogies and contrasts. Both made a belated entry into the field of colonial expansion, having delayed until after Spain and Portugal had taken what then seemed to be the choicest territories in the New World. But although they began late, both France and England made rapid progress. Both obtained a strong foothold in America, and both undertook to get control of India. Both lost their first colonial empires in the latter half of the eighteenth century, the one by conquest, the other by

¹ The population of European (or Metropolitan) France has increased by less than 2,000,000 during the past fifty years. However, the net increase (excess of births over deaths) is now about 300,000 per annum.

revolution. Both then began the creation of a second colonial empire, and during the nineteenth century each succeeded in acquiring great tracts of territory in various regions of the globe.

The contrasts. But the analogies are outweighed by the contrasts. The British empire of today has been built up, for the most part, by private initiative, by the activities of traders and commercial companies. In English colonization the merchant has nearly always gone ahead, dragging his government after him. In French colonization, on the other hand, the government has assumed most of the initiative. The commercial exploiter has usually waited for his government to lead the way, or, at any rate, to encourage him with a subsidy. Dr. Samuel Johnson, sipping his seventh cup of tea, once expressed astonishment that any European should go roaming in far-off lands when it is so much easier to sit comfortably at home. But pioneering has been the sport of the Saxon. It has carried him to out-of-the-way places all over the world.

Attitude of the two governments. There are other differences. Britain's colonial policy has been opportunist, while that of France has been guided by a consistent purpose. It is occasionally remarked, and with some measure of truth, that France acquired a colonial empire while Great Britain stumbled into one. Britain, again, has specialized in the middle latitudes, while France has devoted most of her energies to the tropics. Her principal acquisitions—Algeria, Tunis, Madagascar, Indo-China, the French Congo, Somaliland, French Guiana—are all tropical territories. It is for this reason, among other, that until quite recently the French has not had to wrestle much with difficult problems of colonial self-government. On the other hand, France has given her outlying territories the privilege of being represented in the home parliament, which Britain has not yet done. As a final difference, the French are still inclined to look upon their colonies as areas of exploitation which exist primarily for the benefit of the mother country, although this point of view is gradually being changed. England, as regards her dominions, abandoned it long ago.

France as a factor in world politics. "Happy the land whose history is dull!" It was a Frenchman who said it, but there is no dullness in the annals of his own country. No other land has its pages of history so crowded with victory and defeat, success and disaster, glory and humiliation, each following the other in quick alternation. For five centuries no other country has been so steadily involved in the turmoils of humankind. Modern history records very few international episodes with France left out. To some extent the explanation of this ceaseless activity may be found in the location of the country, for France sits in the very center of Europe, a quadrilateral with a frontage on two seas. She is neither a North-European nor a South-European country; she is both. Six nations are on her flanks—England, Germany, Belgium, Spain, Italy, and

Switzerland. No other great power has so many immediate neighbors. No other great nation, accordingly, has had so strong an incentive to become involved in the meshes of European diplomacy. Geography has denied France the factor of isolation which has profoundly affected the history of England, and to an even greater extent the history of the United States.

French civilization. Close to the center of Mediterranean civilization, her national unity forged in the fires of the Hundred Years' War, France became the standard-bearer of the Renaissance for western and northern Europe. For long, French architecture, art and literature, French fashions and cuisine, set the standards for the other nations. Paris became in many ways what Rome once had been, the center of the civilized world. The emperor's court in Vienna was but a feeble imitation of the glories of Versailles. The English, the Germans, and the rest of northern Europe were comparative provincials. The French regarded these "lesser breeds" almost as the ancient Greeks did the barbarians. Even when the rest of Europe caught up with the French or surpassed them in some respects, the Frenchman continued to regard foreigners as inferior in culture and civilization. This pride of race helped to make the French nation as compact and coherent as any in Europe. It has enabled Frenchmen to bear overwhelming military disasters and to rise again with unimpaired pride and energy to rebuild their country. They have no doubt of their "manifest destiny." And, to be sure, no other people, with the possible exception of the Italians, can claim as many contributions to the art, science, and general culture of the post-Roman world.

Rise and fall of the first colonial empire: 1. In America. During the sixteenth century, when the various countries of Europe engaged in the great race for colonial possessions, France was the premier nation of the Continent. Her population was three times that of England. Her wealth was greater and more widely diffused among the people. Yet the French were the last to enter the field of overseas expansion, and when they got busy all the best territories were gone. Spain and Portugal had acquired Central and South America. England had begun to establish herself in India and along the Atlantic seaboard. France had to go farther north to the Gulf of St. Lawrence. Yet the French made a brave attempt to establish a Bourbon empire in the New World, and by 1750 they were in the way of succeeding. At that date France possessed the whole region north of the St. Lawrence and the Great Lakes, together with what is now the American Middle West, part of the Northwest, and Louisiana. The French were also striving to make good their claim to the Ohio Valley, thus hemming in the English colonies between the Alleghenies and the sea. Had France succeeded in this ambitious plan, how different the history of the New World would have been!

2. In India. In India also the French arrived late but made rapid progress when they came. The expansion of their power in the East was so striking, indeed, that they were nearly on even terms with the English when the great duel between the two nations began. For more than a decade they fought it out on three continents. At the white man's behest, as Macaulay says, brown men knifed one another on the coasts of Coromandel and red men scalped each other on the shores of the St. Lawrence. In the end France was the loser, East and West. By the Treaty of Paris she gave up her vast dominion over palm and pine. Virtually her whole colonial empire passed into English hands. The date of this treaty, February 10, 1763, was a great day in the chronicles of the sceptered isle. Never before had England signed such a peace.

The old colonial policy. In the management of her first colonial empire, France did not display a high degree of imperial statesmanship. Her policy had all the vices of Roman expansion without the virtues. She ruled her colonies with an iron hand and gave them no vestige of local self-government. Those who have read Parkman's immortal volumes on the French in Canada need not be told that no Roman province was ever more completely delivered into the hands of publicans and sinners.² Much has been said and written about England's oppression of her American colonies during the first half of the eighteenth century, but let the student of colonization place the institutions of New England and New France side by side during this period. He will find that English colonial policy, with all its shortcomings and mistakes, was by far the more generous and enlightened of the two.

The Napoleonic interlude. The French took the loss of their first colonial empire philosophically.³ Their colonial ambitions were not abandoned but deferred—necessarily deferred because France was on the eve of grave troubles at home. The rumblings which preceded the Revolution of 1789 could already be heard. It was not until this era of chaos had been definitely ended that the French government could once more turn its attention to the acquisition of colonies. Bonaparte had great plans in this direction. He hoped to conquer the whole of North Africa and make it tributary to France as it once had been to Rome. This would give him a base from which he could strike at India and wrest it from English control. His eagles would fly over mosque and temple. That is why he planned his ill-starred expedition to Egypt and fought the battle of the Pyramids. But the Bonapartist vision came to naught, as it was bound to do, so long as the English held control of the seas.

² One of the most interesting books of history ever written by an American is Francis Parkman's *Old Régime in Canada*. It is on the shelves of every public library.

³ Voltaire's summary dismissal of Canada may be recalled: "A few acres of snow."

THE FRENCH EMPIRE IN NORTH AFRICA

The second French colonial empire: Algeria. The Napoleonic Wars left France exhausted, but still with colonial aspirations. The idea of extending the French sway over Northern Africa had captivated the national imagination. Here was good territory, close at hand, and supposedly easy to conquer. The opportunity to make a start was presented in 1827 when the native ruler of Algiers declined to make amends for an insult to the French consul-general. So his city was bombarded, and when this did not bring him to terms an expedition was convoyed across the Mediterranean. In the end the whole of Algeria was subdued, but only after an unexpectedly long and expensive campaign. Then the country was annexed to France.

Its area and population. This annexation virtually doubled the territories under French control, for Algeria is slightly greater in area than France herself. It contains some highly fertile plains and valleys within easy access of the Mediterranean coast, together with a mountainous hinterland which has considerable mineral wealth. The total population of Algeria is now over 7,000,000, of whom less than 10 per cent are Europeans, chiefly French and Spanish. The rest are of mixed blood, for Algeria has been at various times overrun by the Phoenicians, the Romans, the barbarian tribes of Europe, and the Mussulman Arabs, each of whom left their racial imprints. Agriculture, including the raising of cattle and sheep, is the chief occupation of the people, and Algeria sends large quantities of foodstuffs to France. There is free trade with France both ways, except in the case of a few enumerated commodities.

During the Second World War the Vichy government maintained its control of Algeria until the Anglo-American Allied forces invaded it in the autumn of 1942 and met with only half-hearted resistance. In order to facilitate the occupation of all the French territories in Northern Africa, the allied military authorities gave recognition to a provisional civil government made up of French officials, and this administration ordered a cessation of all further resistance. Thereafter a Franco-African army was quickly organized and equipped with American weapons. It became part of the Allied forces and assisted the latter in driving the Axis troops from the whole area.

Its government. Algeria is regarded, in a political sense, as an integral part of France. Its chief executive is a governor-general, appointed by the President of the Republic on the recommendation of the minister of the interior. Under the supervision of this minister, the governor-general has charge of the military forces and of police administration. He prepares the annual budget, which is voted by the Algerian Assembly. His financial powers are very great. If the Assembly turns down his budget he may proceed as if the previous year's estimates had been voted. So the power of the purse has not yet been

given to the elected Assembly. The governor-general also convenes the Assembly and addresses it. He has the legal authority to require that any particular decision be made by a vote of two-thirds of the members present instead of by simple majority.

The Assembly. The Assembly was created by a law of September 20, 1947, which was passed, incidentally, over the opposition of the Algerian deputies in the National Assembly. It has one hundred and twenty members: sixty from the first (French) college and sixty from the second (native) college.⁴ The members are elected from single-member districts for a six-year term by the two ballot system. Half the membership is renewable every three years. The first election was held in April, 1948, and resulted in the victory of moderate parties over independents in both colleges. The Assembly meets three times per year for sessions of not over six weeks each. It may be dissolved by decree of the council of ministers and new elections held within two months.

Algerian representation in the French parliament. Under the law of October 5, 1946, Algeria elects thirty deputies to the National Assembly in Paris, fifteen by the first and fifteen by the second college. Constituencies are departments as in France, with the southern territories attached to them for election purposes.⁵ The Algerian departments also elect fourteen senators to the Council of the Republic which again are divided evenly between the two colleges.⁶

A contrast with British practice. We may observe a sharp difference here between French and British imperial evolution. The British colonial empire, as we have seen, has tended to dissolve the imperial bonds and gradually approach "dominion status": complete local autonomy together with a friendly but free association with the commonwealth. France, on the other hand, is binding its colonies ever closer politically. The end result of the French trend would be the complete absorption into the French political system, on an equal basis with France itself, of all the French possessions. This may result eventually in a demand for equal representation on a population basis, which plainly would mean the swamping of French by African and other non-French deputies. It remains to be seen how the French will handle this problem if and when it arises.

Tunisia. From Algeria the French spread over into the neighboring territory of Tunisia, interesting to historians as the site of ancient Carthage. It be-

⁴ The first college consists of all full French citizens, Moslem or not, certain categories of war veterans, and the holders of certain educational qualifications. The rest of the population belongs to the second college. Constituencies are departments as in France. The colleges represent roughly a division of the population into Europeanized and native elements, and the system gives the very much smaller French and Europeanized group equal representation with the native masses. Of course, any native who meets the educational qualifications may become enrolled in the first college.

⁵ Algeria has three departments: Algiers, Oran and Constantine and large southern territories.

⁶ Law of September 23, 1948.

came a protectorate in 1882 by a treaty forced upon its ruler, the Bey, following a French invasion. The Bey remains titular sovereign, but actual authority rests with the council of ministers and the French resident-general. Early in 1951 the French government approved decrees issued by the Bey which somewhat reduced French authority. The resident-general, nevertheless, still retains a veto power over all laws before they are submitted to the Bey. Further reforms were advocated by the French government in 1952 and granted in March, 1954, intended to reduce the agitation for independence caused by the upsurge of Tunisian nationalism which had been further stimulated by the United Nations' grant of independence to Libya, a much less advanced country. These reforms gave the Tunisians a majority of the ministerial posts, but equality of power in financial matters was retained by the French. The French colonists consist of about 4½ per cent of the population, but control most of the agriculture and almost all industry. They naturally oppose reforms which would give natives a predominant voice in government and, they fear, jeopardize the advantageous economic position they now occupy. The relatively small number of politically active Tunisians, for their part, wish to exclude the colonists completely from government, even to denying them the franchise. A gradual advance in self-government with a place in the French Union as an Associated State has no attraction whatever for these Arab nationalists. They want nothing less than complete independence. As a first step, they would reform the Grand Council, the Tunisian legislature, by excluding the French colonists.

Morocco. On the other side of Algeria is Morocco, a territory which managed to retain its independence until long after all the others had lost it. This was partly because Spain and England, as well as France, were casting covetous eyes upon it. Each was unwilling that any other country should capture the whole prize. In 1904, however, it was arranged by a series of agreements among the three nations that France should have liberty of action in Morocco in return for certain concessions to Spain on the coast and various compensations to Great Britain elsewhere. But at this stage Germany intervened with a warning that she would not recognize these arrangements and for a time the European horizon became overcast with war clouds. A compromise was patched up, however, and it served until the close of the First World War when it was replaced by the present arrangement.

Present government of Morocco. While Morocco is in theory an absolute monarchy in which the Sultan exercises supreme authority, it is by no means so in reality. The country is divided into three zones—Tangier (which is administered by an international commission), a Spanish zone along the Mediterranean, and the rest of the country which is a French protectorate

which the French now call an Associated State.⁷ The French zone is the most extensive and embraces an area as large as France herself. The Sultan maintains his capital in the French zone, but actual power belongs to the French resident-general and to the administration, the key posts in which are occupied largely by Frenchmen. Here the French are able to play the Berber tribesmen (a majority of the native population) against the urban Moroccans who back the *Istiqlal* (national independence) movement. They have kept the Sultan in line by threatening him with deposition in favor of a Berber chieftain. The French have also insisted, against urban opposition, in giving elected local assemblies to the Berber tribes.

The French point with pride to the fact that they have not only brought peace but also prosperity to this rich North African land. They point to the great phosphate plants and the gleaming chromium and plate glass of Casablanca. They point out, also, that ignorance and inexperience make the ordinary Moroccan unfit for complete self-government without a long period of French tutelage. The *Istiqlal* nationalists, mainly French-educated, retort that the prosperity of Casablanca is French-colonial, not native, and they blame the French for the slow progress of education which finds 90 per cent of the people illiterate after forty years of French rule.

But nationalism is based upon emotion, not reason. Whatever the respective merits of the arguments may be is usually irrelevant. The French have shown little disposition to compromise, and have been ready to use such force as seemed necessary to maintain order and protect their investments. The prospect of a smooth and peaceful development of self-government in this area is not favorable.

Other French possessions in Africa. The African dependencies of France are not confined to the Mediterranean region. Reckoned in square miles, the French have more territory in Africa than the English. But this is because France owns the great Sahara desert—a tract of imperial vastness which has very little value unless it can be irrigated. Other African territories owned by France are Senegal, the Ivory Coast, Dahomey, the Niger region, the Somali Coast, the French Sudan, and Mauretania. The French Congo, in equatorial Africa, is a large and valuable tract bordering the Belgian Congo. By the Treaty of Versailles the French obtained mandates for a large part of two former German colonies, Togoland and the Cameroons, on the West African coast.

Madagascar. The island of Madagascar, on the east coast, is larger than France, although one may not realize it from a glance at the world map. The

⁷ The Tangier zone is permanently neutralized and demilitarized. The Spanish zone is governed by a high commissioner appointed by the Madrid authorities.

French took possession of this island nearly 200 years ago and then abandoned it. Later they went back and declared it a French protectorate, which it remained until 1896 when it became a colony. During the Second World War it was taken over by the British in order to forestall its possible capture by the Japanese, but was restored to France when this danger passed. Madagascar is administered by a governor who receives his instructions from the minister of the colonies in Paris. The governor is assisted by a consultative council and by other advisory bodies known as the economic and financial "delegations." The French population of Madagascar numbers only about 60,000 in a total of over 4,000,000.

IN ASIA

The French colonial empire in Asia. In Asia the French have maintained a foothold for nearly 300 years. By the treaty of Paris (1763) they surrendered most of their holdings in India but were permitted to keep Chandernagor, Pondicherry, and eight small trading stations along the Coromandel coast. This territory France retained until 1947. On October 6 of that year France ceded the trading stations to the new Republic of India. This was done under the pressure of a virtual blockade. Subsequently, on June 19, 1949, Chandernagor decided by a popular referendum to join India. The remaining territory, the towns of Pondicherry, Karikal, and Yanam on the eastern coast of Madras, and Mahé on the west coast, did not become part of India until 1954. Mahé and Yanam were transferred to Indian authorities in July, 1954, after their virtual seizure by Indian forces. The remaining two towns of Pondicherry and Karikal were subsequently transferred after an informal "popular consultation" to satisfy the French constitutional requirement that no part of the French Union may be ceded without consulting the inhabitants of the territory. France was not seriously interested in retaining these vestigial outposts of Empire at the expense of good relations with India and the French government might have acted sooner in the matter had it not been for the unfavorable reaction to such a move on the part of conservative elements in the French parliament.

The Indo-Chinese Federation. Farther to the eastward France had built up a valuable empire in Indo-China. This comprised the colony of Cochin-China and the protectorates of Tonkin, Annam, Cambodia, and Laos. This is rich territory supporting a population of some 30,000,000. As a result of Japanese occupation during the Second World War and other influences, a strong independence movement developed in this part of the world. France acknowledged this in 1949 by moving to set up an independent Indo-Chinese Federation to consist of Cochin-China, Annam, and Tonkin united under the

name of Viet-Nam, together with Laos and Cambodia. The French at the same time recognized a native prince, Bao Dai, as Emperor of Viet-Nam. By 1950 France had turned over some administrative authority to the Viet-Nameese, but the original independence movement flared up again under Chinese Communist aggravation. By 1953 large French armies were engaged in what seemed to be an endless war under very difficult conditions. And in 1954 the French government gave Viet-Nam an assurance of outright independence.

The islands. The island of Réunion, in the Indian Ocean, also belongs to France. In the Australian archipelago the island of New Caledonia and some adjacent islands belong to her, and in the South Pacific there are various French islands, among which Tahiti is the best known. From the wreck of her first colonial empire France salvaged a few possessions in the New World. She still holds two small islands (St. Pierre and Miquelon) off the coast of Newfoundland which are used as the headquarters of the French fishing fleet. France also retains two islands in the Caribbean (Martinique and Guadeloupe) and holds dominion over French Guiana on the northeast coast of South America.⁸

Syria and Lebanon. Among the mandates given to France at the close of the First World War, one is of special importance—the mandate for Syria and Lebanon. This territory includes a broad coastal strip of the old Turkish Empire, with a population which is largely of Arab origin, and Arabic is the language most generally used, although there are large foreign elements in the towns, particularly in Damascus, Aleppo, and Beirut. Between the two World Wars France governed the mandated territories through officials who were under the supervision of the French Foreign office. In 1941 the British moved into Syria as a counterstroke against possible Axis penetration; the Vichy officials were ousted and the independence of both Syria and Lebanon was proclaimed. The two states designate themselves as republics, but France regards her mandate as still valid.

Representation of the colonies in Paris. During the period of the Third Republic some of the French colonies (not including the protectorates) were accorded representation in the home parliament. This was a concession which England has never made to any of her dominions.⁹ The United States has given Alaska, Hawaii, and Puerto Rico the right to send commissioners to the

⁸ As noted above, by a law of March 19, 1946, the colonies of Martinique, Guadeloupe, Réunion, and French Guiana were given the status of *départements* and are now governed accordingly, just as if they were part of France itself, except that the laws of France do not apply automatically to these departments unless this is done by decree (for old laws) or expressly mentioned in the text of new ones.

⁹ Nor did the dominions want it. They preferred independence to integration. Details of colonial representation in the National Assembly are covered by the law of October 5, 1946.

House of Representatives at Washington; but these representatives are not regular members of the House and are not privileged to vote. The senators and deputies from the French colonies, on the other hand, were given full rights of membership in their respective chambers.

The new French Union. The constitution of the Fourth Republic, as has already been explained, contains a rather elaborate series of provisions (Title VIII) for an organization which includes all areas under French jurisdiction. More especially this Union is defined as including France itself, together with the overseas *départements*, the territories,¹⁰ and the associated territories and states.¹¹ Its governing organs, as prescribed by the constitution, have already been explained, but some details of relationship and procedure are still to be worked out by law.

Representatives of all these overseas possessions are to have seats in both chambers of the French parliament (National Assembly and Council of the Republic). Provisions relating to this representation have been embodied in laws which were promulgated even before the new constitution went into effect.¹² They are also represented in the Assembly of the French Union. Briefly the arrangement is that metropolitan France shall be represented equally with overseas France in the Union Assembly. The metropolitan members in parliament (that is, those elected in France proper) elect their half of the Union Assembly by proportional representation of their party groups.¹³ Two-thirds are elected by the National Assembly and one-third by the Council of the Republic. The overseas departments, territories, and so forth, are allotted ninety-four members now, each with one to eleven members except Algeria with eighteen and French West Africa with twenty-seven. The Assembly of the French Union therefore now consists of one hundred and eighty-eight members.

The Associated States are represented in the Assembly of the Union at their own discretion, but in any event have representation in the High Council of the French Union which amounts to a kind of imperial conference.

Neither the Assembly nor the High Council of the French Union have any definitive authority. They are purely advisory bodies. They can give advice on legislation submitted to them by the French parliament and they can suggest legislation concerning overseas areas but they can pass or veto no bills.

¹⁰ French West Africa, French Equatorial Africa, French Somaliland, Madagascar, Comoro Islands, New Caledonia and New Hebrides, French Oceania, St. Pierre, Miquelon, and French Guiana.

¹¹ Tunisia, Morocco, Viet-Nam, Cambodia, and Laos are the Associated States. Togoland, Cameroons are the Associated Territories.

¹² Laws of October 5, 1946, and October 27, 1946. Excerpts in Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 128-130.

¹³ Anyone already a member of parliament who is chosen to the Assembly of the Union must resign one seat or the other.

The overseas members of the Union Assembly are chosen in a variety of ways, but in no case by direct popular vote. The selection is always by a body of local representatives (general councils or territorial assemblies) serving as an electoral college, and an absolute majority is necessary for election on the first ballot. On the second ballot a plurality is sufficient. Overseas members serve for six years; members from Metropolitan France serve only until a new parliamentary election takes place.

One might say that the framework of an imperial parliament has been constructed and that, so far at least, it remains little more than a symbol of imperial self-government. It is interesting to note that this idea of an empire-wide parliament was discussed with enthusiasm by British neo-imperialists before the First World War. They feared that the British commonwealth would disintegrate rapidly if some such institution were not provided. In fact, however, the trend toward greater independence for the dominions continued unabated without destroying the commonwealth. The French, also fearing loss of empire, have adopted the integration rather than the commonwealth plan. It remains to be seen whether or not the French Union will accomplish the desired result.

The status and internal organization of each overseas territory are also left to be determined by law, but with the limiting provision that the representative of the French government shall in every case be the administrative head of the territory. The constitution also provides that an "elective assembly shall be instituted in each territory," but the composition and powers of this body shall likewise be determined by the French parliament in Paris. On the whole, therefore, the component parts of the French colonial empire do not appear to have been given much in the way of constitutional autonomy. The powers of the home government to determine matters by law remain unimpaired.

The minister of the colonies. The minister of the colonies is the chief supervisor of French colonial affairs. He is chosen in the same way as the other French ministers, and like them is responsible to the National Assembly. He has general charge of all the territories belonging to France or under French protection outside of Europe, with the exception of the overseas departments. The French colonial ministry is organized on an elaborate scale, with various services and bureaus. Each bureau is concerned, not with a group of colonies, but with some branch of colonial activity—for example, finance, trade, or police. A very large amount of routine business is handled by these various bureaus because the French, unlike the English, have never acquired the habit of leaving details to be settled by the men who are on the ground.

Colonial self-government. The French authorities in the colonies find

themselves in the embarrassing position of having to administer an electoral system which they regard as premature. They have felt it necessary, therefore, to use such pressures as might be needed to see that the franchise is not exploited by irresponsible nationalists or other demagogues in a way to threaten French supremacy or complicate their administrative problems. An odd result has been that in 1951 the franchise was greatly extended in backward areas and restricted in urban centers. This is because it was easy to induce the natives in rural parts to vote for the "official" (pro-French) candidates and much harder to do this in cities that had been subjected to nationalist propaganda. There can be little doubt that not only official pressure but outright fraud has been employed to assure the desired composition of councils and assemblies. No one defends fraud, but the pressure is defended as needed to counter the pressure and even intimidation exerted by extreme nationalists who herd their ignorant "supporters" to the polls like so many sheep. In the words of one French commentator: "The role of the French administration in the Algerian elections has never been in the least Machiavellian. It consists principally in encouraging the choice of candidates who will really answer the needs of the electorate in the Algerian departments. It may well be compared with that of the prefects during pre-election periods in Metropolitan France."¹¹

France as a colonizer. For various reasons the French have been, on the whole, less successful than the English in their role as colonizers. This is partly due to the good fortune which enabled the English, by their control of the seas, to take some colonies of France (such as Canada and Newfoundland) away from her. But it is also because the French are not a migratory race. France has had no overpopulation, no surplus with which to people her dependencies. The Frenchman, moreover, loves his native soil, and well he may, for there is no portion of the earth's surface more blest by nature than the tract that lies between the Rhine and the Pyrenees. Give a young Frenchman the assurance of a moderate income at home and he usually hesitates to leave France for the chance of making a fortune elsewhere. The practice of distributing inheritances among all the members of a family has deprived France of that venturesome element, the penniless younger sons, who have played so large a part in the up-building of Greater Britain. Finally, something is attributable to the rigid economic policy which France has applied to her dependencies. The doctrine of the open door has never inspired rhapsodies in the French colonial office. The colonies have not been encouraged to develop close commercial relations

¹¹ F. de Clermont-Tonnerre in *Le Monde Illustré* (April 17, 1948), translated by the French Embassy, Information Service, Series IV, Nos. 15 & 16 (May, 1948). For the opposite viewpoint and a listing of colonial electoral malpractices, see Claude Bourdet, "Les élections outre-mer" in *Les Temps Modernes* VII, 70: 355-66 (Aug., 1951). This author contrasts French African elections with those held in the British Gold Coast colony.

with foreign countries. Consequently they have lacked the large inflow of capital which the British overseas possessions have obtained.

The ideal of security. The keynote of French policy toward the rest of the world is *security*. Here is a nation that has had enough of invasion, conquest, and devastation—whose strongest desire is to be secure from any more of it. So France will sacrifice much for the security of her fertile domain. But there are limits beyond which no French government would dare to go. One of these is set by her overseas interests, especially in Northern Africa. France, like Britain, is deeply concerned about the control of the Mediterranean, for her own military manpower must be supplemented by troops and foodstuffs from Algeria in time of war. Likewise France is equally concerned with Britain in keeping the Mediterranean open for communication with the Far East by way of Suez because of her interests in Madagascar, Indo-China, and the islands. These and other considerations have led the French and British to recognize a community of interest outside of Europe. Today, of course, France alone cannot dominate Western Europe. Her governments, therefore, look not only to the traditional British alliance but more and more to a West European regional alliance, economic and military. France, therefore, has supported the North Atlantic Treaty Organization. Her Foreign Minister, Robert Schuman, was the sponsor of the all-European coal-steel pact. With the support of the Benelux countries, France hopes to join a European defense community with West German participation but with due safeguards against any recrudescence of German military or economic domination.

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Germany

CHAPTER XXXIII

From Kaiser to Fuehrer

The old political science was mistaken when it regarded the army as nothing but the servant of diplomacy, and gave it only a subordinate place in its political system. . . . If power, within and without, is the very essence of the state, then the organization of the army must be one of the first cares of the constitution. . . . It is the army which supports the state.—Heinrich von Treitschke

Remember the German people are the chosen of God. On me, the German Emperor, the spirit of God has descended. I am His sword, His weapon, His vicegerent.—Wilhelm II, August 4, 1914

Germany, like Italy, remained little more than a "geographical expression" until the nineteenth century. Both countries were part of the old Holy Roman Empire. This imperial institution was a strange mosaic of kingdoms, principalities, dukedoms, bishoprics, and what not, stretching down the axis of Europe from the Baltic to the Mediterranean. Everyone, of course, has read the comment of Voltaire that it was neither holy, nor Roman, nor an empire. It was not holy because its head was a civilian; it was not Roman but largely German; and it was not an empire because it possessed no imperial unity. Its principal service, or disservice, during the many centuries of its existence, was to keep Germany and Italy from becoming unified nations.¹

The Thirty Years' War (1618-1648). Among many unfortunate results of this ineffective empire, the most evil undoubtedly was the catastrophic Thirty Years' War. This conflict, in which all Germany was involved at one time or another, was a politico-religious struggle marked by extreme bitterness and savagery. Some of the armies that fought in it were little more than gangs of freebooters. As a result, the countryside was ravaged, the towns were pillaged,

¹ The Holy Roman Empire continued to exist, in form at least, until 1806 when Napoleon Bonaparte erased it from the political map of Europe.

and the incredible figure of three-quarters of the population destroyed. Starvation was general and cannibalism not unknown. While France and England were flourishing and expanding rapidly as to population and territory, Germany stood still. In the two centuries before 1800 her population increased by a mere 10 per cent.

The long-delayed unification of Germany came about not through peaceful assimilation and agreement but, in Bismarck's famous phrase, through "blood and iron." The largest German states in the old empire were Prussia and Austria. The latter was the more important in every respect. To begin with, Prussia had been the small, barren northern border province, or "Mark" of Brandenburg. Under its energetic and aggressive Hohenzollern princes it began its expansion by absorbing its smaller neighbors, one by one, until it was next to Austria in size. One reason for the growth of Prussian power in Germany was the careful cultivation of a royal civil service, recruited and promoted according to merit. It has been said that while a perfected parliamentary system was being forged in England, a perfected administration was developed in Prussia. Royal absolutism was complete in Prussia, the more so because of the efficient civil service, but it was a legal, not a whimsical, absolutism. One may say that the Prussian kings had a genuine sense of the public interest insofar as it did not conflict with their expansionist ambitions. The entire state was geared to the army. Frederick the Great's father, Frederick Wilhelm I, spent five-sevenths of all revenues on the army. The military tail wagged the civilian dog.

Prussia versus Austria. Prussia's great opportunity came at the close of the Napoleonic wars when Prussia managed to gain some additional territory and all the German states were brought together into an association called the German Federation. In fact this was a rather loose and amorphous confederation, and from the start Prussia and Austria were rivals for its domination. Bismarck bided his time until the chance offered in 1866 to provoke a war with Austria. The Austrians had been scornful of the upstart northern state but they were beaten easily and quickly. Thenceforward Prussia was undisputed master of Germany while Austria was excluded and confined to her non-German empire. To be sure, many south Germans were far from happy about Prussian domination. Bavaria, indeed, had fought beside Austria against Prussia in 1866. But Prussian power could not be gainsaid and in time Bismarck's diplomacy won the day. All Germany united willingly against the ill-starred Napoleon III in 1870.

The Second Reich (1871-1918). Bismarck's dream of a Germany united under the strong Prussian monarchy had come true at last. After Austria's defeat he had created a North German Federation in 1867. This was now en-

larged into a German Empire made up of twenty-five kingdoms, grand duchies, duchies, principalities, and free cities.² Of these Prussia was by far the largest both in area and in population, being larger than the other twenty-four states of the empire put together. It was not, therefore, a federation of equals. To use a well-known metaphor it was a compact between "a lion, a half-dozen foxes, and a score of mice." Although federal in form, this "Second Reich" was not a true federation. Prussia governed the country with a certain amount of reluctant deference to the wishes of the other states.

In one sense, however, the Second Reich was definitely federal, for it had a constitution which divided the field of governmental powers between the imperial and the state authorities. And the constitution was generous in the amount of authority which it left to the various states.³ The imperial authorities were given jurisdiction over such matters as foreign relations, foreign trade, the army and navy, indirect taxation and customs duties, borrowing, railroads, canals, the postal and telegraph services, currency and banking, patents and copyrights, weights and measures, the regulation of industry, censorship, and so on. In addition the entire field of criminal and civil lawmaking, and of judicial procedure, was turned over to the imperial parliament. On the other hand the actual administration of these functions was largely (though by no means entirely) devolved upon the states and the latter were given many important independent powers.

The emperor; his powers. The chief executive official of the old empire was the emperor. His title was German Emperor, not Emperor of Germany, and he occupied the imperial post by virtue of his being king of Prussia. The two titles went together. No imperial throne was set up, no imperial salary provided, no imperial palaces placed at the emperor's disposal. His salary, palaces, and throne came to him as king of Prussia. As king of Prussia, of course, he was a royal sovereign over three-fifths of the empire, hence his authority was much more extensive there than in the rest of it. As emperor he had important executive powers in only two fields of government—national defense and foreign relations. As commander-in-chief he supervised the organization of the German army and navy in time of peace, with absolute authority over it in time of war. Likewise he appointed the German ambassadors to other countries, gave them their instructions, received ambassadors from

² There were four kingdoms—Prussia, Bavaria, Saxony, and Württemberg; six grand duchies—Baden, Hesse, Mecklenburg-Strelitz, Mecklenburg-Schwerin, Saxe-Weimar, and Oldenburg; five duchies—Brunswick, Saxe-Meiningen, Anhalt, Saxe-Coburg, and Saxe-Altenburg; seven principalities—Waldeck, Lippe, Schwarzburg-Rodolstadt, Schwarzburg-Sonderhausen, Reuss (elder line), Reuss (younger line), Schaumburg-Lippe; and three free cities—Hamburg, Lubeck, and Bremen. In addition there was the "imperial territory" of Alsace-Lorraine.

³ Bavaria was given some special privileges, in order to bring her into the empire, while Prussia was placed under the disability of have only seventeen votes in the Bundesrat or Upper House, although her population entitled her to a much larger quota.

abroad, and exercised a general supervision over all diplomatic negotiations. In this field he possessed the same powers that belong to the president of the United States. But he had a further power which the president does not possess—namely, that of “entering into alliances and treaties with foreign states.” This he had the right to do without consulting either branch of the German parliament unless the treaty happened to require parliamentary legislation for carrying its provisions into effect.

Blunders in these two fields. It was in these two fields of government, national defense and foreign relations, that the emperor found scope for the exercise of his personal influence. In spite of a promise made to his chancellor in 1908 that he would act on the latter’s advice the emperor’s initiative continued to be both direct and decisive. And it was here that William II, third of the emperors, made his most serious blunders. The collapse of the imperial power in 1918 was fundamentally due to a long succession of blunders made by him in military, naval, and diplomatic policy—the domains of government in which the constitution vested him with full power.

The office of chancellor. The imperial constitution of 1871-1918 made no provision for a cabinet. The statesman Bismarck, who was the author of this constitution, desired to be the emperor’s sole adviser. What he wanted was a one-man cabinet. He was ready to have subordinates but not colleagues. So he provided in the constitution that there should be a chancellor, appointed by the emperor to countersign the imperial orders and thereby become responsible for them—but not responsible to parliament. The constitutional responsibility of the chancellor was to the emperor alone. Students of government ought to know something about this remarkable man, who rose in ten years from relative obscurity to be the author of the empire’s constitution, its first chancellor, and a controlling figure in its politics for nearly a score of years.

Bismarck, the first chancellor. Otto von Bismarck was born in 1815, the son of a Prussian landowner. He received a good education, entered political life while still a young man, and soon attracted attention by his vigorous support of the crown. Later he secured a place in the diplomatic service and finally became Prussian minister to France. He was occupying this post when William I summoned him from Paris in 1862, and appointed him prime minister of Prussia. Thereupon he proceeded to put into practice a political philosophy which may be summed up in this way: “The German states must be welded together in a closer union under Prussia’s leadership. To accomplish this, Austria must be ejected from all part in German affairs. This will mean wars, and to win wars Prussia must have an all-conquering army. If parliament will not help build up such an army, then parliament must be sacrificed.”

This objective he pursued relentlessly without a quiver of conscience al-

though it took Prussia into three wars before it was reached. Within a period of seven years he dictated his own terms to Denmark, Austria, and France. Meanwhile he drafted a constitution, organized a new confederation, and transformed it into an empire. Bismarck had no scruples in dealing with his opponents, and his ethical standards as applied to diplomacy left something to be desired. Hence his critics called him a Machiavelli—one to whom the end justified the means—yet Bismarck was a devoutly religious man, a fundamentalist in his beliefs, and patriotism was part of his religion. "One war at a time" was his maxim. So he kept his wars localized. He cajoled France while he dealt with Austria. Then he humored Austria while he squared accounts with France. All the while he cultivated the friendship of Russia and scrupulously refrained from antagonizing England. He would never have let his country get into a conflict with half the world as it did in 1914.

His departure from office. The iron Pomeranian ceased to be chancellor of the empire and prime minister of Prussia in 1890. William II had come to the throne two years earlier. A difference of opinion arose between the two and the chancellor submitted his resignation. Much to Bismarck's surprise the resignation was promptly accepted. The ex-chancellor did not take his dismissal in good part but became a severe critic of his imperial sovereign, thus creating a situation that was embarrassing to all concerned. He died in 1898, but before his death a reconciliation had taken place. After Bismarck's departure from office William II virtually became his own chancellor, although various statesmen held the title and performed the routine duties, including the pacification of parliament.

The imperial parliament: 1. The Bundesrat. The constitution of 1871 made provision for a German parliament, with an upper house, or Bundesrat, and a lower house, or Reichstag. The first was assumed to represent the states and the second the people. The Bundesrat had fifty-eight members representing Prussia, Bavaria, Saxony, and the other German states—not equally (as in the Senate of the United States) nor in exact ratio to population. The basis of representation was a compromise between the two. Members of the Bundesrat were appointed by the heads of their respective states for no fixed terms and could be recalled at will. They voted in accordance with instructions from home, and for that reason every state delegation in the Bundesrat always voted as a unit. Any member of the delegation could cast his state's vote; it was not essential that the other members of the delegation be present. The Bundesrat, from this point of view, was an assemblage of ambassadors rather than a body of senators. With customary astuteness Bismarck had arranged to prevent his constitution from being liberalized. Fourteen votes in the Bundesrat could block any constitutional amendment and Prussia had seventeen.

2. The Reichstag. The Reichstag, on the other hand, was a body of nearly 400 members elected from single-member constituencies on the basis of manhood suffrage. It was supposed to have an equal share in lawmaking, but the Bundesrat became the dominating branch of the imperial parliament. Nearly all important bills originated there. The Reichstag, moreover, could be dissolved at any time by the emperor with the Bundesrat's consent, and on several occasions it was dissolved when it refused to concur with the latter on important measures of legislation. But the chief reason for the Reichstag's failure to become a powerful factor in imperial policy was the absence of any means by which it could control the executive. The chancellor was not responsible to it, nor could his subordinates be called to account by its members.

A chamber of echoes. Having no real control over the policy of the executive, the Reichstag became a chamber of echoes. It received bills from the Bundesrat, went through the gesture of referring them to committees, debated them, amended and compromised when it could, and in the end gave its assent. When it proved obdurate on any important measure a threat of dissolution could be used to mellow its attitude. No single political party ever managed to obtain a clear majority in the Reichstag, and the chancellors were able to play off one faction against another. Yet the old Reichstag had all the externals of a democratic chamber. Its members were chosen by manhood suffrage and no law could be enacted without their consent. But its activities were largely negative and it failed to exemplify the principle of popular sovereignty.

Domestic policies. While Bismarck was chiefly interested in foreign policy and the aggrandizement of Germany as a great power, he recognized the importance, to this end, of domestic contentment and prosperity. He stole the Socialists' thunder by pioneering in the field of welfare legislation with health insurance, old-age pensions, and workmen's compensation laws. All of this was quite consistent with the idea of a paternal and benevolent autocracy. Education, too, received state support. Altogether the *Kaiserreich* was almost as much a service state as it was a military and police state. Local self-government was not interfered with and the German cities enjoyed a kind of city-manager system that provided honest and efficient administration.

The military complex. Germany, as Bismarck once said, "owed more to her armies than to her parliaments." The first chancellor gave up the helm in 1890, but his maxims of politics did not depart with him. "Ballots are yours, but bullets are mine," said William II to his people after Bismarck had gone. The army and navy continued to be the first care of the imperial authorities. The task of bringing the armed forces of the empire to the highest pitch of strength and efficiency seemed to be vastly more important than that of making ministers responsible or developing a sound political spirit among the people.

War was asserted by some German philosophers to be a biological necessity, and the only way of applying the law of the survival of the fittest among nations. Germany must have "a place in the sun"; her only alternatives were *Weltmacht oder Neidergang*, so the people were assured. The officers of her armed forces, at mess, drank toasts "to the day"—when they would meet the French army on land and the British navy at sea. Thus the force complex dominated every phase of German life during the years preceding the First World War. The general staff of the army had more influence upon the emperor than had parliament.

The First World War (1914-1918). It was with high hopes of an early victory that the German armies marched against France and Russia in the summer of 1914. But as the war dragged on and the initial victories were succeeded by defeats in the West while at home the sea blockade began to cause real suffering, war weariness increased and soon developed into serious unrest. At last the German generals were convinced that defeat was inevitable and sued for an armistice. While negotiations were proceeding, a naval mutiny broke out at Kiel and insurrection spread fast throughout the cities of Germany. The Kaiser was forced to abdicate and his example was followed by the local rulers all over Germany. Friedrich Ebert, leader of the Social Democratic party, set up a provisional government, the ex-Kaiser fled to Holland, and in a few days, almost without bloodshed, the *Kaiserreich* of Bismarck was no more.

The new republic. We need not recount the disorders and difficulties that followed upon the establishment of Ebert's provisional government. Communist groups, organized on the Russian model, tried to overthrow the new regime but were defeated. At last, in 1919 a constitutional convention, democratically elected according to a system of proportional representation, met at Weimar to create the basic law for the new republic. The result of their labors was an elaborate document, ten times as long as that of the United States, which tried to retain as many traditional German institutions as possible and combine them with political democracy.

The largest single group in the convention was the Social Democratic (socialist) bloc with 185 members. This was less than half the convention's 418 votes. The constitution, therefore, represented a compromise between the political ideas of the Left and the Center. It was democratic, nonsocialist, and federal, but with most powers given to the national government and few left to the states.

THE WEIMAR CONSTITUTION

The president. The nominal executive power was conferred upon a president, directly elected by popular vote for a term of seven years and eligi-

ble for re-election. As in France, the imposing list of presidential powers was qualified by the provision that they could be exercised only with the counter-signature of the chancellor or a minister who would be responsible to the Reichstag for the decision. This summed up in a few words the essential feature of responsible parliamentary government.

His emergency powers. But the Weimar constitution had another significant provision. In order to permit emergency situations to be handled in a firm manner and without loss of time, the president was empowered by Article 48 to use the armed forces and to issue decrees suspending constitutional rights, such decrees to be subject to review and possible abrogation by the Reichstag.⁴

Now the dictatorial possibilities which lurked in this provision were not fully realized by those who framed it. The intent, of course, was to provide the chief executive with an emergency power which would be used only in a grave national crisis, involving danger to the safety of the republic. But it did not work out that way. Almost from the outset Article 48 was utilized by the president and the ministry to disregard the regular lawmaking bodies and govern the country by the issue of executive decrees. This was done by conjuring up one emergency after another. During the six years 1919-1925, over 130 decrees were issued under the terms of Article 48, but during the six years 1925-1931, when the political situation in Germany became somewhat more stabilized, fewer than twenty emergency decrees were issued. In 1930, however, the Brüning ministry put through its entire financial program by decree, whereupon the Reichstag passed a resolution demanding abrogation. Brüning then appealed to President Hindenburg who dissolved the Reichstag and ordered a new election. In other words, the Reichstag found that it could not exercise its constitutional powers without imperiling its own existence.

A significant lesson from it. The experience of Germany in connection with Article 48 of the Weimar constitution provides the student of comparative government with an illuminating lesson. It demonstrates the danger of entrusting any national executive with praetorian powers, even for emergency use. In countries where disorders endangering the public safety are likely to arise, it is obviously desirable that there shall be some competent authority to deal with such situations promptly and decisively, without waiting for the tardy action of legislative bodies. But to give the chief executive a right to determine when the situation is an emergency one, and to act upon his own discretion in

⁴ There is a story, doubtless apocryphal, that President von Hindenburg after his election called for a copy of the constitution which he had not yet bothered to read. He turned at once to the presidential powers and when he came to Article 48 the old field-marshal nodded his head and murmured: "Not bad! Not bad at all!"

dealing with it—that is an arrangement which embodies not only the possibilities of dictatorship but an encouragement to it. The emergency decrees of the German president were thought to be well safeguarded because their exercise required the countersignature of the chancellor; but this restriction proved to be of little avail because the president could remove one chancellor and install another. And the latter could countersign the order of removal as well as his own appointment! Likewise although the president's emergency decrees could be abrogated by action of the Reichstag, the latter found itself dissolved when it attempted to enforce its power of abrogation.

Government by presidential decree. At any rate the German Republic presently found itself being governed largely by one article of the constitution to the disregard of all the rest. Presidential government, for the most part, replaced parliamentary government. The German courts upheld this situation as constitutional by holding that the president and his ministry were the ones to judge whether or not a serious danger to public safety and order was present.⁵ The general intent of the Weimar constitution was to lodge the center of political gravity in the Reichstag; the outcome shifted it to the executive branch of the government.

The ministry. As for the ministry, which supported the president in carrying on the government under the emergency clause, its size was not fixed by the constitution. The president merely chose a chancellor, and the chancellor, in turn, selected such ministers as he thought desirable. Usually there were ten or twelve of them. Each took charge of a department—finance, foreign affairs, defense, justice, economic affairs, and so forth. In addition the ministry as a whole formulated the general policy of the government and presented measures to the Reichstag for adoption.

The German parliament: 1. The Reichstag. The Reichstag, under the provisions of the Weimar constitution, was composed of members elected for a four-year term by universal suffrage under a system of proportional representation. For electoral purposes the country was divided into thirty-five districts, each of which chose one member for every 60,000 votes cast within the district at the election. Thus the size of the House was not fixed until after the election had taken place. This procedure represented an innovation in electoral methods, and like most novelties in the art of government proved to be unsatisfactory. Its purpose was to assure every political party, however small, its proportional representation in the Reichstag. What it did was to encourage the

⁵ This met with public approval because internal chaos seemed to be the only alternative. The composition of the German parliament made the obtaining of essential legislation virtually impossible.

division of the voters into numerous political parties so that no single party ever obtained a majority of seats in the Reichstag.⁶

Its failure to function successfully. The system of proportional representation which was used in Germany during the republican régime was not the only feature which contributed to the relative impotence of this legislative chamber. The Reichstag's own methods of procedure were also, in part, responsible. All important measures, when presented by the ministry, were not only referred to committees but were considered by the members at party caucuses. Frequently two or more party groups met in joint caucus, and this was especially true of the bloc which supported the ministry for the time being. Thus it came to pass that most of the Reichstag's decisions were controlled by the action or inaction of party groups and did not eventuate from an open debate on the floor. Votes in the House were, in most instances, merely ratifications of what had already been decided by party combinations behind closed doors. This method of doing things facilitated political trading and had an adverse reaction upon the public mind.

2. The Reichsrat. The Weimar constitution provided that "national laws are enacted by the Reichstag." The concurrence of an upper chamber was not made necessary, as in Great Britain, France, and the United States. Yet there was an upper chamber, established by the constitution. Known as the Reichsrat it was made up of ministerial delegates from the fifteen German states and free cities, roughly according to population.⁷ Each of these sent one or more members of its own state-ministry to represent it. Thus the members of the Reichsrat were ex officio ambassadors to Berlin from their own communities. It was as though Nevada were represented in the Senate of the United States by her own governor, lieutenant governor, and state treasurer, while New York could send not only such officials but a dozen others as well. The Reichsrat was intended to be a federal council, representing the state governments.

The process of lawmaking. When a measure passed the Reichstag, however, it did not go to the Reichsrat for concurrence. Instead it was sent directly

⁶ As for the detailed procedure, each political party nominated a list of candidates for each of the thirty-five districts, another list of candidates for each of seventeen unions into which the districts were combined (for the purpose indicated below), and a national list for the whole country. The voters marked their preferences for lists, not for individual candidates. Then, when the ballots were counted, each district was allotted one seat for every 60,000 polled votes. If the list of the Social Democrats received 182,000 votes in any district, the first three candidates on that list were declared elected.

But that was only the first step. There would be surplus votes, or fractions of 60,000 left over. So the surplus votes for each party list in two or more districts were combined for the choice of members from the top of its union list. If, when so combined, the party's surplus exceeded 60,000 it obtained a member. Finally, the surplus votes in all the unions were combined in the same way for the choice of members from the top of the national list.

⁷ It was provided, however, that every German state or city, however small, should have at least one representative in the Reichsrat and that no state, however large, might control more than two-fifths of the membership.

to the president for promulgation. But meanwhile the upper chamber might by resolution file objections with the ministry in which case the measure had to be referred back to the Reichstag for reconsideration. If the latter declined to reconsider, the president could either withhold the measure from promulgation indefinitely or submit the issue to the people for decision at an election. But he was required to either promulgate it or submit the question to a referendum if the Reichstag, in its reconsideration, had stood its ground by a two-thirds vote. Thus the Reichsrat had merely a suspensive veto, which could be overridden by a two-thirds vote of the Reichstag with the president assenting, or by the people in any case.⁸ Provision was also made for a referendum on any law (with certain specified exceptions; if a petition signed by 5 per cent of the qualified voters was presented asking for it. The feeble powers of the Reichsrat were in sharp contrast with those of the Bundesrat it replaced.

The bill of rights and other features. The constitution contained an extensive bill of rights, some of which followed American examples. These rights, however, were rendered chiefly rhetorical by the inclusion of the phrase: "exceptions may be made by law" and by the presidential decree powers noted above. An innovation was the creation of a national economic council of employers' and labor representatives with advisory functions. As time went on, this council became almost purely partisan, its membership divided among the parties in about the same proportion as in the Reichstag. It had little influence upon legislation. Finally, the civil service was guaranteed independence and freedom from political pressure as well as the right to organize into unions.

How the constitution really worked. As noted above, the list system of proportional representation encouraged the persistence of numerous parties and splinter groups. It also discouraged independent candidates. The Reichstag was a faithful miniature of all the shades of political opinion to be found in the German electorate. Ministries were always coalitions, always unstable, and so were not able to plan and carry out long-term policies. Under these circumstances the government was virtually compelled to fall back upon the emergency provisions and legislate by decree. The most serious failures of the successive ministries were in connection with the problems created by the great depression of the thirties. The unemployment insurance provisions col-

⁸ This curious veto arrangement deserves a place in the museum of discarded governmental devices. It may be more clearly explained as follows:

When the Reichstag had passed a measure by majority vote, and the Reichsrat had filed objections to it, the bill went back to the Reichstag and the latter might then: (a) amend the bill to meet the objections, in which case it was promulgated and became a law; (b) disapprove the Reichsrat's objections by less than a two-thirds vote, in which case the president could refer the issue to the people, or if he failed to do this, the bill did not become a law; (c) disapprove the Reichsrat's objections by a two-thirds vote, in which case the president was required either to promulgate the bill and thus give it effect as a law, or else refer the issue to the people for their decision.

lapsed, as all such contributory schemes are bound to do in a prolonged depression. The middle-class German, having lost his savings, if any, in the postwar inflation, was now in desperate straits and horrified at the prospect of social and economic regression into the proletariat. Nevertheless, the government was unable or unwilling to take measures drastic enough to revive the economy. All this resulted in a good deal of cynicism regarding the Reichstag and even the republic as a whole. Bitter dissatisfaction with one government after another found expression in a shift of the voters away from the moderate parties toward the extremes of Right and Left. The chief political beneficiaries of this trend were the new National Socialist Workers' (Nazi) party and the Communist party.

The election of 1930 did not resolve the stalemate in the Reichstag that had persisted since 1928 but it did see the election of an increased number of Nazi deputies. The trend continued and the Nazis grew in numbers and assertiveness even though their leader failed in his attempt to win the presidency from the aged Hindenburg in 1932. By now the Nazis were the largest single party in the Reichstag and their leader, Adolf Hitler, was the obvious choice for chancellor. After others had tried and failed to establish ministries that would be acceptable to the Reichstag, Hitler was invited by the reluctant President Hindenburg to form a government in January, 1933. This step proved to be of far-reaching consequence. It quickly led to the collapse of the Weimar Republic and ushered in the Third Reich.

Constitutional History. Of the many books which deal with German constitutional history in its earlier stages the most useful for general reference are Heinrich von Treitschke, *Deutsche Geschichte im Neunzehnten Jahrhundert* (translated into English by E. and C. Paul under the title *History of Germany in the Nineteenth Century*, 7 vols., London, 1916-1920), and H. von Sybel, *Begründung des deutschen Reiches* (also translated as *The Founding of the German Empire*, 7 vols., New York, 1898). A less detailed account, covering a longer period, is given in Ernest Henderson, *Short History of Germany* (New York, 1916), in J. Holland Rose, *Political History of Germany in the Nineteenth Century* (Manchester, 1912), and in G. P. Gooch, *Germany* (New York, 1925). Mention should be also made of Sidney B. Fay, *The Rise of Brandenburg-Prussia to 1786* (New York, 1937), W. H. Dawson, *Evolution of Modern Germany* (London, 1909), R. H. Fife, *The German Empire between Two Wars* (London, 1916); and A. J. P. Taylor, *The Course of German History* (New York, 1946).

The Second Reich. For the structure and workings of the imperial government during the years 1871—1918 the best source of detailed information is that in Paul Laband's *Das Staatsrecht des deutschen Reiches* (4 vols., Tübingen, 1901), of which there is a translation into French but not into English. A good brief survey may be found in A. Lawrence Lowell, *Greater European Governments* (Cambridge, Mass., 1918). Mention should also be made of B. E. Howard, *The German*

Empire (New York, 1906), and F. Krüger, *Government and Politics of the German Empire* (New York, 1915). The last-named book is strongly partisan but contains a useful bibliography. An English translation of the old constitution may be found in W. F. Dodd, *Modern Constitutions* (2 vols., Chicago, 1908).

Bismarck. An old but useful short biography of Bismarck is that by J. W. Headlam (New York, 1899). The iron chancellor also published two volumes of *Reflections and Reminiscences* prior to his death. A third volume was withheld from publication until after the close of the First World War. Mention should also be made of Emil Ludwig's *Bismarck* (New York, 1929). There is an excellent German biography in three volumes by Erich Eyck. A one-volume condensation in English is now available under the title: *Bismarck and the German Empire* (New York, 1951).

The Collapse of 1918. Good accounts of the events which preceded and accompanied the collapse of the Second Reich in 1918 are given in A. Rosenberg, *The Birth of the German Republic* (New York, 1931); M. Baumont, *The Fall of the Kaiser* (New York, 1931); H. G. Daniels, *The Rise of the German Republic* (London, 1927); R. H. Lutz, *The Fall of the German Empire, 1914-1918* (2 vols., Stanford University, Calif., 1932); and the same author's *Causes of the German Collapse in 1918* (Stanford University, 1934). This last-named volume contains English translations of important German documents. Mention should also be made of E. Bevan, *German Social Democracy during the War* (New York, 1919); Miles Bouton, *And the Kaiser Abdicates* (New Haven, 1921); and Hans Delbrück, *Government and the Will of the People* (New York, 1923).

Texts of the Weimar Constitution. An English translation of the Weimar constitution, by William B. Munro and Arthur N. Holcombe, is published by the World Peace Foundation (Boston, 1920). This translation is also printed as an appendix in Brunet's book (see below) and in Bouton's book on the imperial abdication. Somewhat different renditions may be found in H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), pp. 167-212; George Young, *The New Germany* (New York, 1920); A. Headlam-Morley, *The New Democratic Constitutions of Europe* (London, 1926), as well as in the book by A. J. Zürcher (see below).

Commentaries. In addition to numerous commentaries by German authorities, mention may be made of an English translation by J. Gollomb (New York, 1922) of René Brunet, *La constitution allemande du 11 août, 1919* (Paris, 1921). This book may profitably be studied, side by side, with Otto Meisner, *Das neue Staatsrecht des Reich und seiner Länder* (Berlin, 1923). Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928) is a useful book, with a good bibliography, and so is H. Quigley and R. T. Clark, *Republican Germany* (London, 1928). Julius Hatschek, *Das Reichstaatsrecht* (Berlin, 1924) is a standard treatise on German constitutional law during the Weimar era, and Robert Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche* (24th edition, Berlin, 1929) is also authoritative.

The Constitution in Operation. The practical workings of the Weimar constitution are discussed at length in H. G. Daniels, *The Rise of the German Republic* (London, 1927); Ernst Jäckh, *The New Germany* (London, 1927); W. H. Daw-

son, *Germany under the Treaty* (New York, 1933); Philipp Scheidemann, *The Making of New Germany*, translated by J. E. Mitchell (2 vols., New York, 1929); Arthur Rosenberg, *Geschichte der deutschen Republik* (Karlsbad, 1935); P. P. Reinhold, *The Economic, Financial and Political State of Germany since the War* (New Haven, 1928); R. T. Clark, *The Fall of the German Republic* (London, 1935); A. J. Zurcher, *The Experiment with Democracy in Central Europe* (New York, 1933); Elmer Luehr, *The New German Republic: The Reich in Transition* (New York, 1929); J. F. Coar, *The Old and the New Germany* (London, 1924); W. G. de Roussel, *L'évolution du pouvoir exécutif en Allemagne, 1919-1934* (Paris, 1935); and Herbert Kraus, *The Crisis of German Democracy* (Princeton, 1932). See also Herman Finer, *The Theory and Practice of Modern Government* (Rev. Ed., New York, 1949).

Political Parties, 1918-1933. The ups and downs of the political parties during the Weimar interlude are explained in S. Neumann, *Die deutsche Parteien: Wesen und Wandel nach dem Kriege* (Berlin, 1932); L. Bergsträsser, *Geschichte der politischen Parteien in Deutschland* (7th edition, Munich, 1952); F. Salomon, *Die deutschen Parteiprogramme* (new edition by W. Mommsen and G. Franz, 3 vols., Leipzig, 1931-1932); and Konrad Heiden, *History of National Socialism* (New York, 1935).

Biographies and Memoirs. Prince Maximilian of Baden, *Memoirs*, translated by W. M. Calder and C. W. H. Sutton (2 vols., New York, 1928); Friedrich Ebert, *Schriften, Aufzeichnungen, Reden* (2 vols., Dresden, 1926); R. Wetterstettin and A. M. K. Watson, *Biography of President von Hindenburg* (New York, 1930); G. Schultze-Pfallzer, *Hindenburg* (New York, 1932); J. W. Wheeler-Bennett, *The Wooden Titan* (New York, 1936); R. Olden, *Stresemann* (New York, 1930); and Konrad Heiden, *Hitler: A Biography* (New York, 1936).

CHAPTER XXXIV

The Third Reich

We must get rid of the last vestiges of democracy, especially of the methods of voting and making decisions by majority.—Adolf Hitler

Mankind has grown strong in eternal struggles and it will only perish through eternal peace.—Adolf Hitler

He who serves our Fuehrer, Adolf Hitler, serves Germany, and he who serves Germany, serves God.—Baldur von Schirach

Within two years of Hitler's acceptance of the chancellorship, the Weimar republic had been changed into a totalitarian dictatorship. The presidency was merged with the office of chancellor. Just as in Mussolini's Italy, the constitution was not officially abrogated but simply transformed by a series of laws and decrees into its own antithesis. The Weimar republic was alleged to be a shameful interlude in German history. The ancient empire was known as the First Reich, the Hohenzollern period as the Second Reich, and the new National Socialist era as the Third Reich, destined to last a thousand years, according to Hitler.

The rise of Hitler. How did this remarkable transformation come about? Germany was not a land of ignorant, superstitious savages. It had an excellent educational system. It was industrialized and civilized. Indeed, there was a long democratic tradition among the German working and middle classes which had been manifest in 1848¹ and had been able to express itself at Weimar. How then can one explain the acceptance of this new creed of frantic nationalism, unscientific racialism and, at the start, fantastic economics?

To understand the rise of Nazism it is necessary to know something of the political and social history of the Weimar Republic. First of all, at the end of the First World War, there was the split between the Social Democrats, the

¹ It may be significant that the great majority of German liberals had been forced to flee abroad after the collapse of the revolutions of 1848. In numbers they amounted to 2 per cent of the entire population.

Independent Socialists, and the "Spartacists" who became the German Communist party. The latter attempted insurrection at various times and places, but despite local victories were suppressed with the help of middle-class volunteers. Then the government began to develop a small but efficient army which could prevent any future rebellion from being successful, unless of course, the rebels succeeded in winning the army's support. In 1923 came the currency collapse and the printing-press inflation which the government could not or would not curb. This led to the further discredit of the republic in German eyes and ruined a large part of the middle class. When this was followed by the conservative, deflationary policies of Brüning in 1930, including retrenchment in government spending, unemployment expanded alarmingly and the economic plight of the German masses grew desperate. The government continued to operate almost exclusively by emergency decrees, ignoring the Reichstag.

In the meantime a vulgar little party had been gaining ground chiefly because of the extraordinary spell-binding powers of an Austrian war veteran named Adolf Hitler. This man, of humble origin and little education, found kindred spirits among a handful of disillusioned young veterans who called themselves the National Socialist German Workers' party. Hitler's introduction to the group took place in 1919, and in September of that year he first took on a speaking assignment for the party and disclosed his hitherto unsuspected talents as a demagogue. By 1920 he was addressing meetings with thousands of auditors and the party was so confident of its growing power that it even attempted a *Putsch* in Munich in 1923. This *coup d'état* had been promised official connivance but instead the authorities resisted with force. A few were killed. Hitler and some others were sent to jail. The incident was actually turned to good account by the Nazis. It gave them an honor roll of martyrs and it enabled Hitler, assisted by his cell-mate Rudolf Hess, to compose the bible of the movement: *Mein Kampf*.² Hess was an educated man and a disciple of the geopolitician, General Haushofer. The book thus produced was an extraordinary mixture of fanatical nationalism, racialism, shrewd power politics, unmoral political precepts, and an exposition of the Nazi intention to dominate the world.

In 1924 Hitler was pardoned and released to begin again his demagogic career. His meetings now were protected from Communist and other hecklers by armed ushers wearing the brown shirt and swastika armband of the movement. These had been organized into such paramilitary formations as *Sturm-
abteilung* (SA, Storm Troopers) as early as 1923. Steadily the party gained strength. By 1925 it numbered 27,000; by 1926, 49,000; by 1929, 179,000. Its

² *Mein Kampf* (unabridged translation, New York, 1939).

voting strength was much greater. In 1928 Nazi candidates received 800,000 votes, and in 1930 they polled 6,500,000 votes in the elections.

The program. What was the appeal of the movement? Its official program, which had been issued as early as 1920, consisted of *The Twenty-five Points* and was mainly founded upon the prejudices and desires of the lower middle class. It denounced the infamy of the Versailles Treaty, the Communists, the Socialists and the parliamentary system, the Jews and the banks and big business dominated by them, the leisured class who lived on unearned income, the big department stores that undersold the small shopkeepers. It demanded the abrogation of the peace treaties, the rearmament of Germany, the expansion of Germany to include all Germans (that is, Austrians too), the return of the German colonies, the disfranchisement of Jews, the expulsion of aliens, the confiscation of war profits, the "purification" of the press, the creation of a strong central power in the Reich.³

Various parts of this program appealed to different elements in the population. Point 22, which demanded the re-establishment of a mass army, struck a responsive chord among the old officer class and the industrialists who regarded much of the rest of the program as nonsense. The imperialists were in hearty agreement with the foreign policy section. The anti-Semitism of the program found a ready welcome among the German masses. There had always been a certain amount of anti-Jewish feeling in Germany exacerbated by the success of many German Jews in various fields of business and the professions. In a period of intense stress and economic misery it was easy to canalize the frustrations and impotent resentments of the German people into attacks upon these readily available victims. By identifying the Jews as the cause of many of Germany's troubles and then by attacking these defenseless individuals, the Nazis found great relief from their tensions at no risk to themselves.⁴ The general attack upon big business appealed to the economically submerged middle class and justified the "Socialist" portion of the party's name. The equally vague and general attack upon "interest slavery" was the product of the peculiar economics of Gottfried Feder, a main author of the program, who was subsequently dropped by Hitler along with his theories. In the meantime this plank appealed to the large debtor class. Above all, the appeal that Hitler and his associates had for the German people was that of strong leadership and courageous, even fanatical, patriotism in a period of weak, unsatisfactory governments. The old gods of the Hohenzollern empire were dead. The new repub-

³ The text of this program may be read in J. K. Pollock and H. J. Heneman, *The Hitler Decrees* (Ann Arbor, 1934); W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937); and Norman L. Hill and Harold W. Stoke, *The Background of European Governments* (New York, 1935).

⁴ For a scholarly analysis of this subject see Eva G. Reichmann, *Hostages of Civilization: the Social Sources of National Socialist Anti-Semitism* (London, 1950).

lic, doctrinaire and democratic, had no strong roots among the German masses. Here was a leader who offered them the military discipline they had missed since 1918, who flattered their wounded national pride, who offered, too, a positive and radical program of action to overcome their economic distress. Small wonder that the German voters supported the Nazi candidates in ever-increasing numbers.

The Nazi accession to power, January, 1933. By 1932 the general political situation had deteriorated to the point where the government was operating entirely by decrees, Prussia was virtually under martial law, and left-wing elements were in a revolutionary mood. There had been two Reichstag elections in 1932. The Nazis had won 230 seats in July, and in the second, a November election, lost strength, winning only 196 out of a total of 608 seats. Still, they were the largest single party, and despite his unwillingness to do so, President Hindenburg as already mentioned was prevailed upon to offer the chancellorship to Hitler, who took office in January. At once the latter introduced a "Law for the Protection of People and State" which suspended civil liberties. In February the government raided the Communist party headquarters in Berlin and suppressed not only the Communist but the Social Democratic press. In the same month the Reichstag building was set on fire under mysterious circumstances. The government instantly accused the Communists of this outrage, although it is difficult to see what advantage the latter might have hoped to gain by such an act. Indeed it is probable that the Nazis were the actual arsonists. At any rate, they used the incident to indulge in an orgy of high-pressure propaganda and intimidation of their foes.⁵ Under these circumstances the last election of the Weimar Republic took place in March. Despite all the violence and propaganda employed, Hitler and his allies received only about 52 per cent of the total vote, winning 340 seats out of 647.⁶

The Enabling Act, March 23, 1933. With this slim but sufficient majority, Hitler pushed through the Reichstag an act to replace the democratic republic by a dictatorship. It provided that, until April 1, 1937, or until the replacement of the existing government, the government might legislate or conclude treaties by decree, regardless of constitutional limitations, except as regards the presidency, the Reichstag, and the Reichrat.⁷ In a Reichstag from which all Communist members were excluded, this law was passed by a vote of 441 to 91. Hitler received the support of the center and right-wing parties and

⁵ The Storm Troopers were sworn in as special police and used their authority to prevent opposition speeches and electioneering.

⁶ The Nazis had 288 seats and their Nationalist allies 52.

⁷ A translation of the text of the Enabling Act is given in W. E. Rappard *et. al., op. cit.*, and in Hill and Stoke, *op. cit.* It was renewed before the date of expiration.

was opposed by the Social Democrats. As the act received more than the two-thirds majority required for a constitutional amendment, it was valid as such.⁸ Having thus handed over its powers to Hitler, the Reichstag adjourned.

The organization of the Third Reich. Hitler began at once to liquidate his political opposition by decreeing the dissolution of all parties other than his own, including even his Nationalist allies who were induced to "commit suicide" as a party. Organized persecution of the Jewish minority began, a persecution destined to persist throughout the life of the régime and actually reaching its most fantastic excesses only during the war period when hundreds of thousands of middle European Jews were murdered in ghettos and the infamous concentration camps.

Structural changes. As regards governmental structure, even the generous limits of the Enabling Act were ignored and the Reichsrat abolished, while the Reichstag was permitted to exist as a sounding-board and cheering section for Hitler's more important speeches.⁹ When President Hindenburg died in 1934, his office was simply merged with that of Hitler, the *Fuehrer*.

Elections. This does not mean that elections were abolished. Instead they became a useful part of the propaganda machinery.¹⁰ In 1936, for example, an election was held to prove to Germany and the world that Hitler was the choice of all and especially that his repudiation of the Treaty of Locarno was universally supported. The ballot contained only the names of Hitler and, in smaller type, his stooges, Hess, Frick, Goering, and Goebbels. There was a single circle in which to place a cross. Blank ballots seem to have been counted as "yes" votes. The only way in which opposition could be indicated was by not voting at all. The party machinery, therefore, was organized to get out the vote. If a recalcitrant anti-Nazis was immune to the pleas and threats of the Storm Troopers he was liable to dismissal by his employer under orders from the party. It is not difficult to believe that these methods gave Hitler a 99 per cent majority in the plebiscite. Subsequently, in 1938, a more than 99 per cent majority was obtained for the Austro-German *Anschluss* or merger. In this case the Austrian majority was the incredible figure of 99.75 per cent, slightly higher than the German, and so arranged for the impression it would give of Austrian enthusiasm at the "return to the Fatherland."

The civil service. The assumption that the civil service should be non-political and serve loyally under governments of varying policies is based upon the democratic idea that there *are* a number of parties and that one's loyalty

⁸ Unless the validity of the entire Reichstag be challenged because of the force and fraud employed in the elections.

⁹ Membership in the Reichstag became an honor and reward for party officials. Duties were nominal and the salary substantial. It has been called "the best-paid *claque* in all history."

¹⁰ Altogether there were three Reichstag elections and four plebiscites during the Nazi period.

to the state overrides any party loyalty. This makes no sense in a one-party, totalitarian régime where the state is subject to the "party" rather than the reverse. Logically, therefore, the Nazis proceeded to purge the civil service including the educational system of all elements considered hostile to the new régime. These included not only Jews but known Social Democrats and others guilty of expressing anti-Nazi sentiments at any time. This policy was enforced gradually because there were few active Nazis among the civil servants to start with and the government could not afford to destroy this necessary arm. In about four years the service was largely Nazified, and the merit system of recruitment employed again but with all aspirants examined for political reliability before being allowed to take the examinations.

The cabinet. Hitler continued to use a cabinet. Its members were not only appointed by him but responsible to him alone. By 1937 all ministers were Nazis and under party discipline. So long as they remained in office their powers were considerable because they had wide legislative as well as administrative authority. They seldom met as a cabinet because Hitler preferred to confer with them singly or in small groups. The bulk of the legislative power was given to a triumvirate of three superministers: Himmler as administrative chief (to supervise the ministries of interior, justice, science and education, and church affairs); Funk as economic chief (to supervise the ministries of economics, food and agriculture and labor); and Keitel, chief of the general staff (to supervise the post and telegraph services and the armed forces). These three with a few others, under the chairmanship of Goering, later formed the war cabinet. They issued almost all the decree-laws except when Hitler preferred to use the Reichstag or the entire cabinet for reasons of publicity. The important decisions were usually made by Hitler himself who seems never to have lost confidence in his intuition and who permitted no opposition among his subordinates however exalted their positions.

Judicial reorganization. The old idea that law has a greater permanence than governments and that there are certain spheres of law which are above considerations of policy, is equally foreign to the totalitarian mind. To begin with, the courts which had, in general, been part of the *Laender* (state) structure were made into national organs. It was impolitic for the Nazis to dismiss all the judges who failed to do their will, and it took considerable time for the judicial system to be "reformed" in line with Nazi ideas.¹¹ One of the first things done was the creation of a new people's tribunal for the execution of summary revolutionary justice upon enemies of the régime. This was set up

¹¹ Naturally all Jewish and "politically unreliable" judges were dismissed in 1933. For the most part justice was allowed to function as usual unless the defendant was a Jew, a political enemy, or, on the other hand, a Nazi. Even if acquitted by the courts, a political opponent might be handed over to the SS for "reformation" in a concentration camp.

following the failure of the old supreme court to convict the Communist defendants in the Reichstag arson case. It was made a permanent tribunal in 1936, with a bench of life-appointed judges aided by honorary judges appointed by Hitler for five-year terms. It was not bound by procedural rules applying to regular courts and could act in total secrecy. In this way persons dangerous to the dictatorship could be eliminated without any need to use the ordinary courts, and with as much or as little publicity as might be desirable. In 1942 a former president of this people's tribunal was made minister of justice with authority to deviate from existing laws regarding judicial administration.¹² This was regarded as the final step in the complete subordination of law to policy. Subsequently the new minister of justice announced that the courts must be sure that their decisions would always accord with the will of the government. The administrative courts, too, were allowed to exist for a time but without jurisdiction over any "political" acts. These courts were virtually abolished in 1939. After all, they were based upon the idea that a citizen may have rights against the state, an absurdity in Nazi doctrine. Altogether the idea that there is a proper "sphere of anarchy," in which the individual can make his own choices quite apart from politics, gave way to the totalitarian ideal of living positively according to the Nazi philosophy. A cell has no rights against the organism of which it is a part.

The police. Similarly the police were thoroughly reorganized into a national system, and eventually Heinrich Himmler, the head of the special *Schutz-Staffel* (Elite Guard), was placed in charge of all police including the notorious secret state police, *Geheim Staatspolizei*, known as the "*Gestapo*," whose particular function it was to ferret out the enemies of the régime.¹³ Large concentration camps were established in which were placed both ordinary criminals and political offenders as well as those whose only crime was Jewish ancestry. These camps were under the direction of Himmler's SS. The sickening details of the bestiality and cruelty of their administration need not be recounted here.¹⁴ They formed a principal part of the apparatus of terror with which Hitler sought to repress not only active opposition but every evidence of anything but enthusiasm for his new order. The *Sicherheitsdienst* (SD) of the SS were used to keep watch over the loyalty of Nazi officials. They operated, as did the SS in general, outside the jurisdiction of the ordinary courts.

The army. As Supreme War Lord, Hitler's chief interest was the building up of the army, navy, and air force. He was anxious to do this as rapidly as pos-

¹² This was Dr. Otto Georg Thierack who had presided over the people's tribunal when it had been responsible for the wholesale execution of Hitler's political enemies.

¹³ Originally organized by Goering as Hitler's Prussian deputy in 1933, the Gestapo was made an all-Reich establishment under Himmler in 1934.

¹⁴ There are many descriptions by former inmates. See, for example, Eugen Kogon, *The Theory and Practice of Hell* (New York, 1950).

Nazi masters and German history of the same variety. All textbooks in these fields were rewritten. For the rest, his studies were less arduous than under the old dispensation and more time was devoted to sports and military exercises. All new teachers had to be of unimpeachable loyalty to the régime and were trained particularly in the party's ideals. University students were admitted only after completion of a season in a labor camp, approval of the local Youth Leader, and certification as "politically reliable." Each university had a Nazi-directed student union to keep watch over the professors' political orthodoxy. The result was the disappearance of the most distinguished figures in German scholarship and a sudden diminution of German academic production in both quantity and quality, particularly in the social sciences.¹⁶

Propaganda might be described as adult education, for the domestic efforts of Dr. Goebbels represented a continuation of the schooling received by German children and youths. Not only in the schools and universities but in the several party organizations were the young people under considerable pressure to join. It may be said simply that every possible channel of information was made a monopoly of the Nazi party and that each was used directly or indirectly to glorify the régime and the Leader, and to excoriate its foes. The twenty-one pages devoted to the subject of propaganda in *Mein Kampf* show that Hitler had indeed a firm grasp of the principles of mass psychology and mass propaganda undeterred by any respect for truth. This work he placed in charge of Dr. Paul Joseph Goebbels, minister of popular enlightenment and propaganda. The entire press, radio, theatre, cinema, as well as all minor media, were under the minister's absolute control. This was done by a series of decrees starting in 1933,¹⁷ the most important of which provided that all journalists be turned into semiofficial persons owing responsibility for their productions to the state rather than to their employer. Violators of Nazi ethics under this decree were liable to trial before a special court where they could be punished by fine, imprisonment, and expulsion from their profession.

The ideal of a German people acting like an automaton, instantly responsive to Nazi ideas and commands and to no others was never achieved completely. The confessional schools still existed and taught ideas that could not possibly be reconciled with Nazism. Organized opposition was weak, but much unorganized opposition existed, finding expression in private conversations and jokes at the expense of the Nazi leaders. It is an encouraging comment upon human intelligence and mental toughness that all the apparatus of persuasion and terrorization available to a modern dictator, together with a com-

¹⁶ See C. A. Beard, "Education under the Nazis" in *Foreign Affairs*, April 1936.

¹⁷ In the year 1933 occurred the notorious "book-burnings" when works of a liberal nature or by Jewish authors were publicly destroyed in bonfires throughout the Reich.

plete monopoly of public means of expression, cannot entirely destroy the opposition.¹⁸

The Nazi system. One might summarize the National Socialist philosophy as follows: the sole source of sovereignty is the German people. They consist of a racial community which is immortal and the custodian of civilization. This sovereignty is not vested in the state as such but exercised in the name of the people by the National Socialist party, the people's exclusive representative and embodying their best elements. The party works through the state which is obedient to it. The will of people and party finds its incarnation in the Leader who is realized by all true Germans as their inspired commander.¹⁹ The Leader is no mere organ of the state but of the people. He governs through the party and the state with the aid of the armed forces.²⁰

If one accepts this mystical concept of the nation as an organism with a mystically inspired human leader, the dictatorship of this leader is entirely logical as is the subordination of all institutions and individuals to the national goals decreed by the leader. Psychoanalysts have examined these concepts and reported upon them. There is no doubt that they represent a feminine response to the leader on the part of the mob. Great release and comfort can be gained by a perplexed and powerless individual who is able to join a "movement" with an "inspired" father-substitute at its head who will do all the worrying and make all the decisions. For the feeling of security thus engendered the individual will make many sacrifices of personal freedom.²¹ For many, too, the rise of a dictator means personal advancement, a chance to exercise authority, and share in the glamour of the new élite. Whenever some national disaster has shattered the old beliefs and institutions, when the average citizen is unable to feel that his economic and social future is secure, then the dictator has enormous political appeal.

The end of the Nazi dream. Of course, a government based upon nationalistic imperialism is bound to clash with other governments representing people who stand in the way of its ambitions. Nazism, by its own internal

¹⁸ See F. M. Cahen, *Men against Hitler* (Indianapolis, 1939), and Allen W. Dulles, *Germany's Underground* (New York, 1947).

¹⁹ Described by a constitutional lawyer(!) Dr. Wilhelm Stuckard, as "the supreme political leader of the people, supreme leader and highest superior of the administration, supreme judge of the people, supreme commander of the armed forces and the source of all law."

²⁰ Most of the ideas underlying the Nazi philosophy were familiar to many Germans, and doubtless the more acceptable for that reason. Primarily they were the product of a wave of nationalism sweeping over a people accustomed to absolutism in political life. Absolutism had been defended by the idealist philosophers, Fichte and Hegel and by Heinrich von Treitschke and Friedrich Nietzsche. The "folk" idea and the myth of Nordic supremacy received its original statements in the writings of a Frenchman, Count de Gobineau, and an Englishman, Houston Stewart Chamberlain. Anti-Semitism had flared up before, in the later nineteenth century, spear-headed by Adolf Stocker and his Christian Socialist party.

²¹ For a Russian example of this same response, see the quotation at the beginning of Chapter xli.

logic, was compelled to undertake military adventures or suffer internal disintegration. Early successes inflamed Hitler's psychopathic egotism to the point where he believed failure to be impossible. Having bullied the French and English into accepting the rape of Czechoslovakia and having secured the benevolent neutrality of Stalin, he proceeded without misgivings to attack Poland and thus launch the Second World War. The events of this war need not be recounted here. The early success of German arms, the suicidal attack upon the Soviet Union, and the later reverses ended with the complete destruction of the Nazi forces and their unconditional surrender on May 7, 1945, shortly after the suicide of Hitler himself in Berlin.

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New York, 1937); and by Karl Loewenstein, "The Government and Politics of Germany," Part III in James T. Shotwell, Editor, *Governments of Continental Europe* (Revised Edition, New York, 1952).

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CHAPTER XXXV

Post-war Germany

Wherever Germany extends her sway, she ruins culture.—Nietzsche

Military government. The collapse of the German armies resulted in the immediate occupation of all Germany by the allied forces and the establishment of military government. This was no easy task. Not only had most German cities been bombed into rubble but the bombings had been so recent and thorough that there had been no time even to clear the streets of débris. Transportation facilities and public utilities in many places had ceased to operate and there were very few German officials left at any level who were available for use by the military government officers.

The Yalta conference, February, 1945. Just before the end of the war in Europe, Roosevelt, Churchill, and Stalin had met at Yalta in the Crimea for a conference. They agreed to the zonal occupation of Germany with a central control commission in Berlin. Germany was to be demilitarized, war criminals to be punished, industry to be controlled, and reparations collected.

The Potsdam conference, July, 1945. Following the defeat of Churchill at the polls, and the death of President Roosevelt, another conference was held, this time at Potsdam between Stalin, Attlee, and Truman. The resulting agreement amplified the principles of the Yalta conference and spelled out a number of details. A central German government was to be postponed indefinitely and the necessary all-German decisions to be made by the Allied Control Council in Berlin. Germany was to be permitted to restore her economy to provide for a "European" standard of living, but the precise treatment of German industry was left vague with plenty of room for later disagreement. Demilitarization was a primary goal along with the destruction of the Nazi party and the removal from public life and influence of all who had been genuine Nazis. On the positive side, democratic tendencies were to be encouraged by means of restoring civil liberties, free speech and press, and truly

representative government. Industry was to be removed from the control of the great industrial combines such as those of I. G. Farben and Krupp. Some industries were to be dismantled and sent to the Soviet Union as reparations and others to be destroyed as chiefly of military importance.

Government of Germany, 1945-1949. The Potsdam agreements provided the basic structure of German government for the next four years. Each of the four occupying powers provided the personnel, civilian and military, to carry on the government of its zone. The British were assigned northwest Germany; the Soviets, east Germany; the Americans, central and south Germany; and the French, the southwest.¹

At the local level, military government was organized in accord with the necessities of administration and operated under directives from zonal headquarters. At the center was the Allied control authority for Germany headed by the four commanders or military governors of the four zones who met three times a month in Berlin as the control council. The control council was aided by twelve or more central directorates, each staffed by the four powers and each having a particular administrative field such as transport, finance, reparations, politics, and so forth. In addition there was a coordinating committee of the four deputy military governors who met frequently and often assigned problems for study and recommendation by the various directorates.

Given a disposition to compromise and a real will to secure agreement, this system would still have been a cumbersome one, as the military governors had to operate under strict directives from their respective governments. As it turned out, the difficulties were almost insuperable because of the uncompromising attitude of the Soviet Union and, to a lesser extent, of France.

The Soviet attitude. Secure in superior military strength, and for reasons which will be clarified when we discuss Stalinist philosophy, the Soviet authorities rarely retreated from a position they had once taken. In particular they refused to do anything toward the setting up of a genuine central administration for Germany. At the same time Soviet propaganda in Germany harped on the theme that the British and Americans were preventing this unification. American and British moves to prevent total economic collapse in their zones were condemned by the Russians as violations of the Potsdam agreements.

The French attitude. The French, too, were unwilling to coöperate in any move toward a reunited Germany and did not regard themselves as bound by the Potsdam conference which they had not attended. Thus, for reasons entirely different from those of the Soviet Union, they helped to create difficul-

¹ It was said that the Russians had the food supply, the British the industry, and the Americans the scenery.

ties in the implementation of the Potsdam agreements. They shied away from any moves toward a strengthened Germany and revived ancient French claims to the Saarland which they actually annexed with the belated approval of the British and Americans but not with that of the Soviet Union.

The four zones. As a result of the failure of the central government to function properly, the four zones became the real governmental units in Germany, with the over-all decisions applied in very different ways in the several zones. The central German agencies called for by the Potsdam agreements were never established owing to Russian obstructionist tactics and also to French reluctance to accept any move toward German unification.

The British and Americans arranged an economic merger for their two zones in 1947 with German experts to advise the bizonal economic council. The Russians and French were invited to join this economic union but did not do so.

The *Laender*. As in old Germany, the *Laender* or states were re-established in the various zones but not always in accordance with their historic boundaries. Prussia was split into several *Laender*, and in many cases boundaries were drawn to suit the needs of the occupying forces.² The Americans were the first to give a high degree of self-government to the German people at the state level. Each *Land* had its own constitution which, in the American zone, was drafted by the Germans and adopted by popular vote in each state. American influence may be traced in the provision of constitutional courts with the power of judicial review of legislation as to its constitutionality. In general, however, the Weimar constitution was the chief source of the provisions in the new fundamental laws of the states.

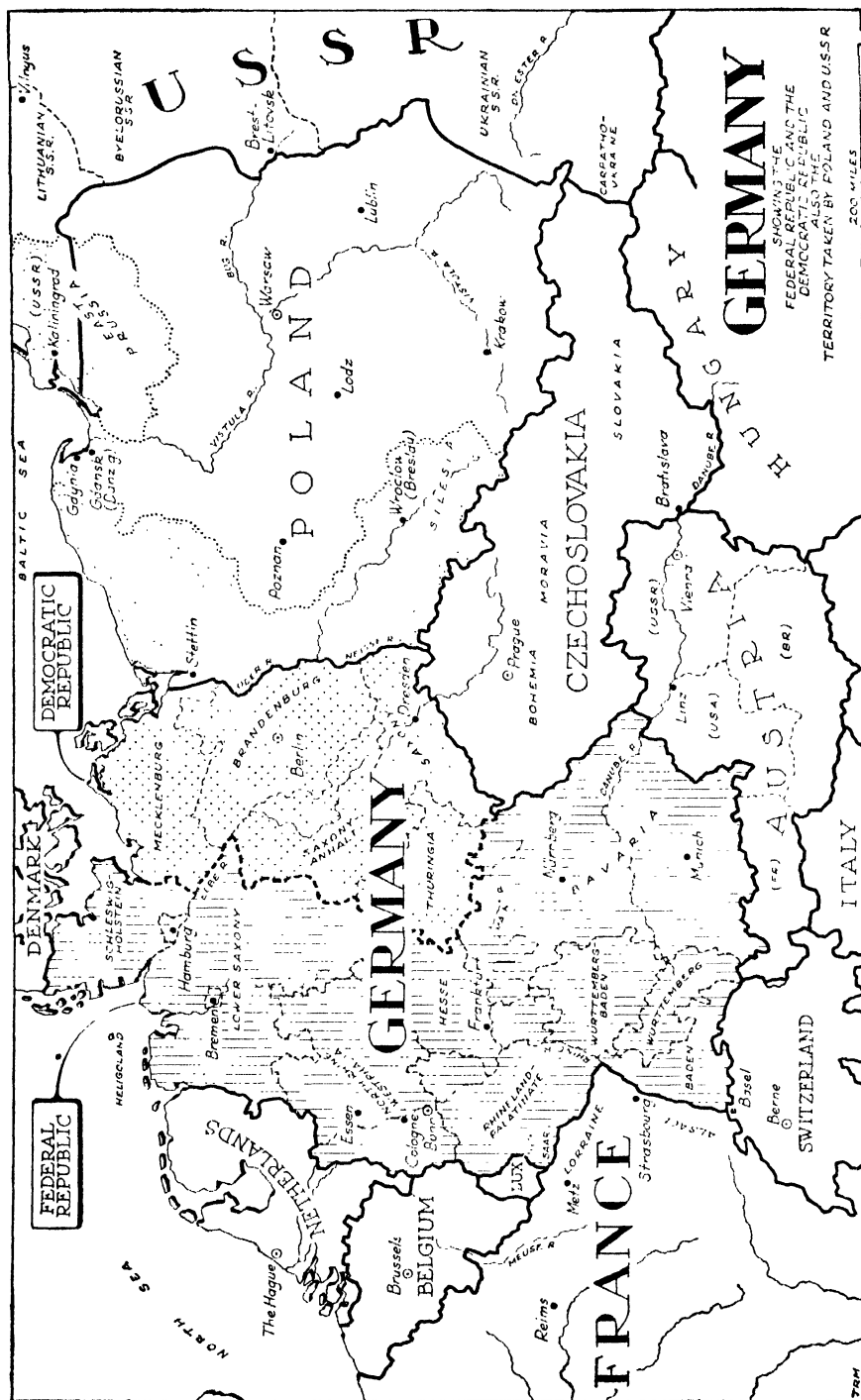
The *Laender* constitutions in the French zone are rather similar to those in the American zone. The British simply issued an ordinance conferring certain powers on the *Land* governments without establishing formal constitutions. The Soviet zone states have what seem to be, on paper altogether, democratic

² The British zone included the *Laender* of Hamburg, Schleswig-Holstein, Lower Saxony, and North Rhine-Westphalia. The French had Rhineland-Palatinate, Wuerttemberg-Hohenzollern, and South Baden. The American Zone included Bavaria (identical with the old kingdom except for a small part which is in the French zone), Wuerttemberg-Baden, Hesse, and Bremen. The five Soviet zone *Laender* are: Saxony, Saxony-Anhalt, Thuringia, Mecklenburg, and Brandenburg.

The Federal Republic has an area of about 94,399 square miles and an estimated population of 47,712,500, of whom over 11,000,000 are political expellees or refugees from the East. The East German Republic has an area of 41,600 square miles and an estimated population of 18,000,000, not including East Prussia which is not part of the republic, but has been totally incorporated into the Soviet Union.

In general, the British and Soviet *Laender* followed historic boundaries, the French and American did not.

In the spring of 1952 the three *Laender* of Baden, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern chose by plebiscite to form a single Southwest State. Accordingly, the *Laender* of the Federal Republic now consist of: Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Southwest, and Schleswig-Holstein.



Germany Showing Federal Republic and "Democratic Republic," Also Territory Taken by Poland and USSR
 Drawn by Theodore R. Miller

constitutions which are almost identical in their provisions. Their legislatures are unicameral and choose the responsible ministry. A special constitutional court reviews the constitutionality of legislation. Various freedoms are guaranteed and provision is made for the public support of religious institutions. In all five *Laender*, however, the Soviet-sponsored Social Unity party is in control.³

Berlin. Berlin city, deep within the Soviet zone, was divided into zones, each under one of the occupying powers and represents an unhappy microcosm of the national divisions. The disagreements and lack of coöperation between the powers are particularly awkward in a city where the normal lines of travel, utility arrangements, and so forth cut across the zonal lines and where there are two kinds of currency in circulation and two municipal governments each claiming to be the authority for the entire city.

A city council was elected in 1946 and chose a Socialist mayor who was promptly refused recognition by the Russians because he was anti-Communist. At this election the Social Democrats, the most numerous party before their suppression by Hitler, received almost half the vote, the Christian Democrats got about 22 per cent and the Socialist Unity party (Communist and fellow-traveler) less than 20 per cent. Subsequently the Soviet zone recognized a Social Unity mayor and in effect Berlin has two municipal governments.

THE FEDERAL REPUBLIC OF WESTERN GERMANY

As soon as the immediate emergencies of the early occupation period were disposed of, it became increasingly obvious that in the long run Germany would have to be reassembled into a national state. This was true because a functioning German economy is the key to European recovery. Nevertheless, two of the four occupying powers were unwilling that this should be done except on their own terms. The French were afraid that a reconstituted Germany would soon again be a military threat to Western Europe. The Soviet authorities would accept nothing but a Soviet-dominated Germany. The British and Americans were anxious to avoid a permanent East-West split if this were at all possible and so tried for two years to work through the Allied control council in Berlin while the economic situation became worse and the German population more and more restive.

By late 1946 the British and Americans had concluded that Soviet opposition was permanent and so they proceeded to set up an interzonal authority which was revised in 1947 and 1948. They were loath to make this a perma-

³ For the texts of the various *Land* constitutions in the French, American, and Soviet zones see the publication by the Office of Military Government (U.S.), *Constitutions of the German Länder* (Berlin, 1948). They are discussed in R. G. Neumann "New Constitutions in Germany" *Am. Pol. Sc. Rev.* (June, 1948).

nent German government because of the strong popular opposition to a split Germany and because it would give the Soviet propagandists a chance to blame the division of Germany upon the British and Americans. Nevertheless it was thought better to proceed to establish a West German government rather than allow matters to remain in the stalemate resulting from Soviet intransigence.

The London conference of 1948 and the Ruhr statute. A conference was called at London in the summer of 1948 between the United States, Britain, France, and Germany's Benelux neighbors: Belgium, the Netherlands, and Luxembourg. All agreed that self-government in western Germany must be established in accord with the Potsdam agreement despite Soviet opposition. A constituent assembly was authorized to draw up a basic law for western Germany. Subsequently another conference was held to settle the control of the great coal and steel industry of the Ruhr valley, of vital interest to France and indeed to all western Europe. It was agreed to set up an international authority for this area including representation of the six powers as well as Germany, when authorized. This authority has control of the most important aspects of the Ruhr industries, although ownership of them is still private.¹

The Bonn Assembly, 1948-1949. In accord with the London conference agreement, the *Laender* governments of the three western zones of occupation appointed delegates to discuss a national constitution for Germany. The eleven states sent a total of sixty-five members. They were overwhelmingly left-center in political complexion. Between them, the Social Democrats and Christian Democrats were represented by fifty-four delegates; there were five Liberals, two Centrists, two members of the German party (conservative), and two Communists.

The meetings lasted from September 1, 1948, to May 8, 1949, when the final draft of the basic law was approved with only eleven opposing or abstaining votes. Upon approval by the *Laender* governments the Bonn constitution was officially put into effect by proclamation, May 23, 1949. The following month military government in western Germany was abolished and replaced by a high commission, consisting of one representative for each of the three powers, the United States, France, and Britain, with a subordinate organization practically identical with that of the Allied control authority, and with a representative in each *Land* to oversee the correct administration of high commission policies. In effect, the high commission represents a kind of supergovernment empowered to interfere with German affairs to the extent deemed necessary. Under the contractual agreement between the *Bundesrepublik* and the western Allies, concluded in May, 1952, the high commission had the right

¹ In the summer of 1952, the Ruhr steel companies were freed of all restrictions on output and capacity and steps were taken to dissolve the International Authority. This followed the ratification of the Schuman plan for an all-European steel-coal merger.

to proclaim a state of emergency and take whatever further steps might be deemed necessary. It was declared that such action would be taken only under the gravest provocation. The Allies also retained the right to continue dealings with the USSR regarding German unification and boundary matters.

The Bonn constitution. The Bonn constitution is a long and detailed document with 146 articles. It evidences the strong influence of the Weimar constitution in many of its provisions. In repudiation of a permanently divided Germany it pretends to set up a basic law for all Germany, including "those Germans to whom participation was denied" (because of their residence in the Soviet zone). It does not claim to be a permanent arrangement and in its final article seems to anticipate the day when it will be superseded by a constitution adopted by all Germany.

Federalism. The Weimar constitution provided for a highly centralized federalism. As specified by an allied directive, the Bonn constitution is somewhat less centralized and more truly federal according to American ideas. The central government is given exclusive powers in foreign affairs, citizenship, transport, communications, and so forth. Concurrent powers (both central and state) exist in the fields of law, social insurance, economic regulations, and other matters. In case of conflict with state law, central law is supreme within its enumerated or concurrent powers. Federal laws are in general administered by the states under federal supervision.

The governmental system. The *Bundesrepublik Deutschland* or German Federal Republic has a parliamentary system very much like that of the Weimar Republic. As head of state there is a president chosen by a federal convention consisting of the members of the *Bundestag* (lower chamber) plus representatives from the popular assemblies in the *Laender*. This contrasts with the direct election of the president in the old republic. He is elected for a five-year term and may serve not more than two consecutive terms. As in France, there is no vice president. In case of the president's demise or removal, the president of the *Bundesrat* acts until the federal convention meets to elect another President of the Republic just as it does within thirty days of the normal end of a presidential term.

The president's functions. The president is the nominal executive and chooses the chancellor (prime minister) who must then be accepted by the *Bundestag*. If he is not so accepted, the president makes no more proposals and the *Bundestag* itself proceeds to elect a chancellor by majority vote, or by plurality if no candidate gets a majority within fourteen days. In the latter case, that of a chancellor who has only plurality support, the president has a choice between accepting him and dissolving the *Bundestag*.

The presidency thus presents a rather sharp contrast with that of the Wei-

mar Republic. Under the Weimar constitution, the president was directly elected by the voters and had the power to dissolve the *Reichstag* as well as other important emergency powers. His only remaining emergency power of possible significance is the ability to dissolve the *Bundestag* under the conditions mentioned above. In other respects he is virtually as powerless as the British monarch, while the chancellor has acquired powers even greater in some ways than those of the British prime minister.

The chancellor. So long as he remains in office, the chancellor has complete control of the executive side of government as well as the leading role in the legislative drama. He is free to choose and dismiss his ministers at will, as his choices do not require parliamentary approval but are appointed automatically by the president on the chancellor's nomination. Nor are they subject to a vote of no confidence in parliament. Of course he is under the practical necessity of recognizing his political allies in making these appointments. He has extensive control of the public purse. Even though the annual budget requires parliamentary approval, he can, if the budget fails to pass, authorize the payments needed to carry on the government. He can even, acting through his minister of finance, approve extraordinary expenditures over and above budget authorization. On the other hand, he has a veto over parliamentary attempts to increase the spending side of the budget (Articles 110 through 113). As legislative leader he dominates the government's program and takes a leading part in important debates.

The fall of a government. The one great difference between the position of Bismarck and that of Adenauer is that the latter is responsible to the lower house of parliament. The chancellor can be removed from office by a vote of no confidence. Its use, however, is hedged about with restrictions. There must be a delay of forty-eight hours between the introduction of such a motion and the vote on it. More significantly, it must contain the name of the proposed new chancellor, which means that the chancellor's opponents must be able to agree upon his successor before they can introduce the motion. If such a motion is carried by an absolute majority the transfer of power takes place at once. If, on the other hand, the old chancellor is upheld, but by less than an absolute majority, he may, if he likes, ask the president to dissolve the *Bundestag*. This request must be granted within twenty-one days unless meanwhile the chancellor has been replaced by an absolute majority.

Ministerial stability. This requirement of a "constructive vote of no confidence" and of an absolute majority for its passage is intended to make for ministerial stability, the lack of which was an outstanding weakness in the Weimar Republic. It has certain practical drawbacks. One can readily imagine a case in which the chancellor has lost effective control of parliament in spite

of the fact that his opponents cannot agree upon his successor, and in which the chancellor prefers stalemate to dissolution. Such a state of affairs would not prevent the chancellor from carrying on as chief executive and would tempt him to use his extensive emergency powers.

Germany has been noted for constitutional lawyers rather than for political scientists, and this device is a typical attempt to find a legal solution for a political problem. At bottom, cabinet instability is due always to an electorate that is divided among several parties, no one of which has a majority. So long as political democracy prevails, the ministry is bound to reflect these divisions. A legal device intended to keep a ministry in power after it has lost the confidence of the legislature cannot work unless it destroys the basis of parliamentary democracy.

A chancellor who has been defeated in the Diet and who does not want a dissolution may prolong the life of his government under another provision (Article 81). Although this provision is not well drafted and may be interpreted in various ways, it would seem to permit a chancellor who has been defeated in the attempt to pass an important bill to declare a state of "legislative emergency." If the *Bundestag* still rejects the bill the chancellor may secure its passage if he can get the approval of the *Bundesrat* alone. The sole restriction on this power is the provision that no chancellor may declare a legislative emergency for more than six months of his term of office.⁵

The Bundestag. The *Bundestag* or popular house of the parliament is elected for a four-year term unless cut short by previous dissolution. The members are elected by universal suffrage and secret ballot. They must be at least twenty-five years of age. The electoral law is not a part of the constitution itself but an ordinary law. It provides that 60 per cent of the seats be filled from single-member constituencies and the remainder by a party-list system of proportional representation, according to relative party strength in each state. Parties receiving less than 5 per cent of the total vote receive no representation at all. This last provision was designed to do away with some of the tiny "splinter" groups that were a factor in ministerial crises under the Weimar Republic.⁶

Electoral law of June, 1953. The law was amended in June, 1953. Chancellor Adenauer attempted to push through parliament a bill patterned

⁵ Professor Franz Neumann takes a pessimistic view of these emergency provisions. He writes, "It may be no overstatement to say that, in the guise of parliamentary democracy, the Bismarckian system has been reintroduced in Western Germany." Franz Neumann, "German Democracy, 1950," *International Conciliation*, No. 461, 260-61 (May, 1950).

⁶ A detailed description of this law and a favorable estimate of its fairness is contained in an article by James K. Pollock, "The Electoral System of the Federal Republic of Germany—A Study in Representative Government," *Am. Pol. Sc. Rev.*, XLVI, 4, 1056-1068 (December, 1952).

after the 1953 Italian election law which would have enabled his coalition, by uniting their lists, to get a certain majority in the September elections. In this attempt he failed because the Free Democrats refused to vote for the bill. As passed, the law increased the number of Bundestag seats from 402 to 484. Voters have two votes, as before: one for a named candidate in a single-member district, and one for a party list. Half the seats are filled from the single-member districts and half from the party lists. No party failing to receive at least 5 per cent of the total federal vote may receive any seats from its list although its candidates may be elected directly from single-member districts.

The Bundesrat. The upper chamber, in the German tradition, is purely representative of the state governments. The *Laender* are represented there by not less than three members each—by four if their population exceeds 2,000,000 and by five if they have over 6,000,000 inhabitants. The delegation from each *Land* consists of members of the state government and casts its votes *en bloc*. The *Bundesrat* may be addressed by the chancellor and ministers even though they are not members of it.

Legislation. The legislative power is enjoyed jointly by the two chambers, the *Bundesrat* enjoying a veto over *Bundestag* bills, which veto can be overridden by a similar majority in the lower chamber. In other words, if the bill is defeated in the *Bundesrat* by simple majority, a similar affirmative majority in the *Bundestag* is sufficient to override. If the defeat was by a two-thirds majority then a two-thirds vote in the *Bundestag* is required to repass it (Articles 76 through 78).

Constitutional amendments. The basic principles of democratic federalism are declared to be unamendable. Amendments to the basic law can be made by a two-thirds absolute majority in each house of the legislature (Article 79). No popular referendum is required. A federal constitutional court is established to decide alleged conflicts of laws with the constitution and other public law questions. This court is composed of federal judges plus members elected by the two chambers of the legislature from among persons not connected with the government or any legislature.

The Constitutional Court in action. The twenty-four red-robed justices of the Federal Constitutional Court met for the first time at Karlsruhe in September, 1951. Their first case was one relating to a proposed merger of the three occupation-delimited states of Baden, Wuerttemberg-Baden, and Wuerttemberg-Hohenzollern. There were several legal points involved, and the court seized the opportunity to spell out a number of constitutional principles. It declared unconstitutional a federal law extending the terms of two of the state legislatures, but approved a law providing for a plebiscite on unification. As a result of this decision a lively dispute between Wuerttemberg and Baden

subsided, and the court could pride itself on a good start in its career as an interpreter of fundamental law.⁷

Subsequently a more explosive issue was raised when President Heuss asked the court for advice on the constitutionality of the proposed Bonn pacts. Previously Chancellor Adenauer had requested the court to rule on whether or not a simple majority in the Bundesrat could approve the treaties. His request was so drafted as to call for an opinion by the second senate of the court (a section of eleven justices) believed to be pro-treaty. The president's request would have required the decision of the full court, and Herr Adenauer was afraid that it would declare the treaties unconstitutional. In such a case they could be passed only by a constitution-amending two-thirds majority, impossible to obtain. Evidently under pressure from the chancellor, President Heuss withdrew his request of the court at the last moment (December 10, 1952). This entire episode smacked more of politics than of law and added prestige to none of the parties involved.

Capital and flag. The charming university town of Bonn was chosen federal capital by a close vote, 200 to 176. The seal, flag, and emblems of the Weimar Republic were restored without change. A new parliament building was built on the bank of the Rhine. The *Bundestag* chamber conforms to the usual European pattern with a hemicycle of seats centering upon the president's throne, below which is the podium from which the members address the assembly. To the president's right are chairs for the ministers, and to his left, seats for the *Bundesrat* members. The *Bundestag* seats are upholstered in black and those of the ministers and *Bundesrat* in green leather. The building is handsome in a simple, modern style, and its acoustics are said to be excellent.

The bill of rights. The list of constitutionally guaranteed rights contained in Articles 1 to 19 is based largely upon the traditional democratic liberties as found in British and American law, but it contains several novel items. Capital punishment is abolished by Article 102, and Articles 4 and 6 provide respectively that no person may be compelled to perform military combat service against his conscience and that no legal provision may exist to the disadvantage of illegitimate children.

An attempt is made to ensure that civil liberties will not be abused by groups bent on destroying them. Associations of a criminal nature or "which are directed against the constitutional order or the concept of international understanding are prohibited" (Article 9). One who abuses the freedoms "in order to attack the libertarian, democratic, basic order, forfeits these basic

⁷ For an account of the court's disposition of this case and its declared constitutional principles, see the article by an associate justice of the court, Gerhard Leibholz, "The Federal Constitutional Court in Germany and the 'Southwest Case,'" *Am. Pol. Sc. Rev.*, XLVI, 3, 723-731 (Sept., 1952).

rights. The forfeiture and its extent shall be determined by the Federal Constitutional Court" (Article 18). These provisions are a two-edged sword. It is easy to imagine a government motivated by neo-Nazi or Communist ideas using these articles to destroy the rights of opposition parties.

The judiciary. In addition to the special constitutional court, mentioned above, there is also a Federal Supreme Court to hear appeals from the high federal courts. Each *Land* also has its own court system. The independence of the judiciary is protected by Article 97, and special courts able to override the ordinary courts, such as Hitler's Peoples' Courts, are expressly forbidden by Article 101. It remains to be seen, however, whether or not the German courts will give full implementation to the new bill of rights. Traditionally, German judges have tended to take a bureaucratic and even a reactionary position in conflicts between officials and ordinary citizens. Perhaps this tradition will disappear with the assistance of a free press and a vigilant public.

The civil service. Another stronghold of conservatism and extreme nationalism is the civil service. Broadly speaking it accepted Nazism willingly, and of course those who did not were removed. After the war there was little effective de-Nazification among the bureaucrats.⁸ Furthermore, little has been done to change the essentially upper-class character of the higher civil service, historically allied to the army and to industry. The ability of parliament to reform and control the civil service will be a test of the strength and vitality of German democracy.

German Local Government. German local government was admired the world over for its efficiency and freedom from partisan politics and corruption until its Nazification under Hitler. In Western Germany it has now been restored virtually to its pre-Hitlerian condition. Each *Land* has its own law regulating local government but the system is similar in its essentials throughout the country. The two principal organs of local government are the mayor (*Bürgermeister*) and the municipal council (*Gemeinderat*). In the smaller units both are elected directly by universal suffrage. The mayor, who must be at least twenty-five years old, needs a straight majority to be elected on the first ballot. If no candidate obtains a majority a run-off election is held between the two men who topped the poll. The mayor's term is usually a long one, six years or so, and he may be re-elected. The elected members of the municipal council also enjoy long terms with staggered retirement. The size of the council varies according to population from eight members in a community of less than one thousand to sixty for one of over 400,000 inhabitants. Councillors represent multi-member constituencies with four or more to be elected in each. Broadly speaking the council is the legislature and the mayor the executive who plans

⁸ See John H. Herz, "The Fiasco of Denazification in Germany," *Political Science Quarterly*, LXIII, 569-594 (Dec., 1948).

policy and oversees administration. The council sets up its own committees after every election and these committees are assisted by co-opted citizens who have special competence in the committee's field of interest. In some cases the law requires the committee to secure the help of specified persons. In Baden, for example, the committee concerned with poor relief must include a minister of religion, a teacher, a physician and a police official.

The mayor is assisted in his administrative functions by persons appointed by him called *Beigeordnete*. These "assistant mayors" also sit in the council and have an advisory vote. Each of them is responsible for a particular department of the administration. In cities of over 10,000 population the mayor is called "chief mayor" (*Oberbürgermeister*). This office is *not* an elective one. A chief mayor must by law have the qualifications of a judge or higher civil servant unless the government allows an exception to be made in a particular case. He is chosen by the municipal council and is often a "professional mayor" from some other place, like an American city manager. Many chief mayors have made a life career of this position. The chief mayor is assisted by a number of appointed deputies. The principal one of these is first vice-mayor and is called *Bürgermeister*. The other *Beigeordnete* vary in number depending upon the size of the city.

It remains to be noted that German towns and cities have no "home rule" in the American sense as regards the structure and details of their government, although small communes may combine voluntarily under a single mayor for reasons of economy. Further, all municipalities are under the general oversight of the state's ministry of internal affairs. In emergencies the ministry can replace the elected council by state officials. Broadly speaking, it may be said that German municipalities enjoy less independence than those of the United States but are less closely supervised by the central government than those of France.

PARTIES AND POLITICS⁹

At the first elections, held in August, 1949, the largest vote was obtained by the Christian Democratic Union, a moderate Catholic group including the Bavarian Christian Social Union. They received more than 7,350,000 votes. The next largest vote (over 6,900,000) went to the Social Democratic party, a gradualist Socialist party equivalent to the British Labor party or the French SFIO.¹⁰ The only other sizeable delegation was that of the Free Democratic

⁹ For a discussion of parties in the Western zone, see Hill, Stoke, Schneider, *Background of European Government*, 3rd ed. (New York, 1951), pp. 511-529. See also Neumann, *op cit.*, 275-282.

¹⁰ It should be noted that the partition was especially unfortunate for the Social Democrats whose greatest strength was in the Prussian areas now under Soviet rule. Formerly the largest German party, they are particularly anxious for a reunited Germany which would again give them the dominant position in politics. Even the inclusion of West Berlin would give them a small majority in the Bundestag and come close to restoring the old preponderance of Lutherans over Catholics. Some Christian Democrats, on the other hand, are not eager to see Germany united, although they dare not express this attitude in public.

Party with a few over 2,750,000 votes.¹¹ Accordingly the Christian Democrats got 139 seats, the Social Democrats 131, and the Free Democrats 52. The Communists won only 15 seats for a vote of 1,360,443. The remaining 65 seats were scattered among small parties having concentrated local strength or representing a conservative viewpoint.

The election of the President of the Federal Republic provided the first trial of party strength. An agreement between the Socialists and the Catholic party was impossible; the latter secured the help of the Free Democrats to give the presidency to the Free Democrat chairman and the chancellorship to Konrad Adenauer, the Catholic leader.¹² The vice chancellorship went to a Free Democrat, and the Christian Democrats and Christian Social Union held eight of the twelve other cabinet posts. Two portfolios went to the conservative German party, with seventeen seats in the *Bundestag* and two to the Free Democrats.

Subsequent trends. Following the first federal elections, two trends were observable in West German politics. The conservatives began to take heart and there was a recrudescence of Nazism, in some cases an undisguised advocacy of a return to the ideals and politics of Hitler. On the other hand, many Germans, heartily sick of war and fearful because of their exposed position on the edge of Soviet territory, emerged from their political apathy to strengthen the Social Democrats who opposed vigorously any step in the direction of German rearmament or incorporation into the Western defense system. This was shown in the state elections of November, 1950, when the Social Democrats made notable gains. This was true even in Catholic Bavaria where they beat the Christian Social Union on its "home grounds."

Neo-Nazism. The shattered forces of Nazism first attempted renewed political activity in the form of a number of tiny parties. By 1950 these displayed a tendency to merge, a tendency further stimulated by the 1953 electoral law which makes it hard for splinter groups to secure any representation in the *Bundestag*.¹³ Many of the neo-Nazi parties can be recognized by the use of "Reich" in their names, a word redolent of past imperial glories. The largest party of the extreme Right is the *Deutsche Reichspartei* which had eight seats in parliament before the 1953 elections. The most frankly neo-Nazi was the *Sozialistische Reichspartei* which was represented in parliament by its leader,

¹¹ The Free Democrats represent a consolidation in 1948 of several parties standing for political democracy and laissez-faire economics.

¹² Although essentially based upon the old Catholic Center party, the Christian Democrats now include many Protestants, and the party leadership includes members of both confessions. The party leader, Konrad Adenauer, has consolidated his position by discreet use of federal patronage. He is anti-socialist and has the support of the Catholic hierarchy, the higher civil service, and business interests.

¹³ For details of the election law see above, p. 574. In June, 1953, a merger of four such groups took place at a meeting in Nuremberg, and in July a new party called the National Rally was formed at Mannheim out of some thirty neo-Nazi organizations.

Dr. Fritz Dorls. Following a disquieting increase in strength shown by the SRP in the 1950 state elections, the Adenauer government decided that the movement could no longer be ignored and asked the Constitutional Court to rule on its legality. Before a decision could be handed down, the SRP dissolved itself in September, 1952. No doubt its former members have found a political home in other parties of the extreme Right. Some probably joined the *Frei-korps Deutschland*, a neo-Nazi secret society of semimilitary character whose members are sworn to absolute obedience. The Adenauer government moved to suppress this organization also in February, 1953, with the arrest of several of its leaders. Previously Dr. Werner Naumann, a well-known former Nazi, and several of his associates had been arrested and charged with conspiracy to overthrow the republic. Naumann's plan appears to have been to infiltrate the large, conservative Free Democratic party, become its official head, gain the chancellorship and then repeat Hitler's tactics in destroying the machinery of democracy. Evidently the German government is now aware of the potential dangers of neo-Nazism and so, perhaps, are the German people in general. At any rate, the two largest parties of the extreme Right, the All-German People's party and the German Reich party, received between them in the 1953 elections only 2.3 per cent of the popular vote and won no seats in the Bundestag.

The 1953 elections. Many observers had feared that the federal elections held in September, 1953, would see the overthrow of the Christian Democratic government or possibly result in a stalemate between the Christian Democrats and the Socialists with the balance of power in the hands of a strengthened extreme Right. In the event, however, the Christian Democrats emerged victorious, greatly increasing their percentage of the popular vote over 1949.¹⁴ The Social Democrats also gained in number of votes received but just about held their own in percentage of votes polled. The smaller parties generally did badly, the only exception being the newly formed Refugee Association with 5.9 per cent of the popular vote. Communist voting strength fell from 5.7 per cent (in 1949) to 2.2 per cent. As a result they now have no representation in the Bundesrat as compared with fifteen seats in 1949. The Christian Democrats won an over-all majority of one, 244 seats out of 487. Together with the allied Free Democrats and German party this would give the chancellor a strong majority of 306.

It will be noted that together the victorious Christian Democrats and their rivals in popular esteem, the Socialists, polled 74 per cent of the total vote. This may possibly be taken as an indication that the extremist parties are losing their appeal and that the Germans may be moving toward a genuine two-party

¹⁴ In 1953 they received 45.2 per cent, in 1949, 31 per cent. The Social Democrats received 28.8 per cent as compared with 29.2 per cent in 1949. In 1953 the Christian Democrats polled 12,440,799 votes; the Socialists, 7,939,774.

system with both parties unquestionably loyal to the republic and its constitution and so presenting the voters at all times with the possibility of a democratic alternative government.

THE EAST GERMAN "DEMOCRATIC REPUBLIC"

Within their own zone the Soviet authorities had set up a central organ called the German Peoples' Council, *Deutsche Volksrat*, which had adopted a constitution for all Germany three months before the final draft of the Bonn constitution was accepted. This Soviet zone constitution had been "ratified" by the third German Peoples' Congress on May 30, 1949, by a vote of 1,999 to one. On October 7 the *Volksrat* met in Berlin and transformed itself into a provisional *Volkskammer* (Peoples' Chamber) or legislature and declared the constitution to be in force. By November the five *Laender* governments had elected their thirty-four representatives to the *Laenderkammer*, the two chambers had elected a President of the Republic, and the Soviet Military Government had been dissolved—its powers transferred to the new republic and a Soviet control commission set up.

The Soviet zone. The area under the new constitution consists of the five *Laender* of Saxony, Saxony-Anhalt, Thuringia, Brandenburg, and Mecklenburg. It has a population of approximately 18,000,000. Berlin, although the capital, is excluded for the moment from full membership because of the four-power agreement. Nor is Soviet East Prussia included.

The constitution. The influence of Stalin's 1946 constitution is obvious in some of the wording and provisions of the constitution of Eastern Germany. The popular house of the legislature, the *Volkskammer* is declared to be "the highest organ of state power" (Article 50). Its members are elected by universal suffrage and secret ballot according to a system of proportional representation. As in the Soviet Union, the dictatorial control is exercised at the nominating stage or earlier. Candidates may be nominated only by organizations which "adhere to the principles of democracy in the public and social life of the republic."¹⁵ While seemingly unexceptionable the word "democracy" in this context must be read as meaning "communism." The strongest party nominates the minister-president (prime minister), and he forms his government by distributing cabinet posts among the various groups according to the size of their parliamentary representation. As in the Federal Republic, the prime minister may be ousted by the *Volkskammer* by a vote which replaces him with a new minister-president.

Although federal in form, the East German Republic is virtually unitary in

¹⁵ Article 13. Nominations for the Peoples' Chamber may be made only by bodies which "maintain a nation-wide centrally directed organization."

fact.¹⁶ The exclusively federal area of legislation includes not only the obvious subjects of nationality, transport and communications, foreign affairs, and so forth, but also civil and criminal law. The federal government enjoys *concurrent powers in all other fields* and so can at any time and on any subject supersede state laws.

The *Laenderkammer* is the second house of the legislature. It consists of (at present) thirty-four members elected by the state legislatures on the basis of one member for each 500,000 inhabitants. In addition there are seven nonvoting observers from the Soviet zone in Berlin. This is a very weak second chamber. Its veto of bills sent up by the *Volkskammer* can be overridden by a similar majority in the latter, as in the case of West Germany.

The President of the Republic is elected for a four-year term by simple majority vote of the two chambers in joint session. He is eligible for re-election and can be removed by a two-thirds vote of a joint session. His functions are purely formal and without power. He cannot even exert influence by choosing among competitors for the office of prime minister. This choice is made entirely by the *Volkskammer* and the president simply inducts the government.¹⁷

The government. The government is of the usual parliamentary type. The minister-president or premier is named by the strongest party in the *Volkskammer*. The ministers should be members of the *Volkskammer*. Evidently the use of "should" instead of "must" gives the minister-president the power to choose his ministers from outside parliament upon occasion. As in the Federal Republic, only a "constructive" vote of no confidence is allowed, naming the desired successor to the outgoing minister-president. Because of the destruction or intimidation of genuine opposition parties, this provision may be considered as "window dressing."

Civil rights. The usual democratic freedoms are guaranteed by the constitution: freedom of religion, speech, assembly, labor organization and the right to strike, personal inviolability from illegal search or seizure, fair trial. On the other hand, those guilty of "warmongering" or any action against "democratic" organizations are to be punished. Further, according to Article 24, private property may be expropriated with or without compensation, and the article indicates that this will be done in cases where private property is used to acquire "economic power prejudicial to the common interest." No farm may be larger than 100 hectares (247 acres). Larger holdings are unlawful and may be expropriated.¹⁸

¹⁶ At the second congress of the Socialist Unity party, in July, 1952, Walter Ulbricht, the deputy premier, advocated the abolition of the five *Laender* in favor of fifteen "districts" to be governed by "councils."

¹⁷ The first President of the Republic was Wilhelm Pieck, an old Communist, who was elected unanimously in October, 1949.

¹⁸ This has been applied to the estates of the former *Junkers* or country gentry. Land reform in the shape of distribution of small holdings to peasant proprietors is the invariable first step in Communist tactics. This pleases the peasantry and keeps them content until the régime is ready to cajole and compel them into collectives.

Education. Education is compulsory and the school-leaving age is eighteen. While religious congregations are free to give religious education, they may not set up their own schools. Private schools of all sorts are forbidden by Article 38.

The judiciary. It is significant that the constitution contains no guarantee of an independent judiciary, which would, indeed, be contrary to Communist dogma. The judges have no powers of judicial review of legislation. According to Article 132, the *Volkskammer* may dismiss any judge guilty of violating the constitution. The *Volkskammer* is the final judge of constitutionality. It may elect a constitutional committee to study and report on alleged unconstitutionality of laws but need not accept the report (Article 66).¹⁹

The judges are all appointed by the *Laender* governments except those of the superior courts who are elected by the *Laender* legislatures on nomination by the governments. Similarly, the supreme court judges are elected by the *Volkskammer* on nomination of the government (Article 131). Article 134 forbids extraordinary courts, but the force of this prohibition is destroyed by the permission of special courts. . . "If their competence is to comprise categories of persons or issues defined beforehand and in a general way." It is hard to see how Article 134 could prevent the establishment of such courts as Hitler's peoples' tribunal.

Constitutional Amendments. The constitution may be amended by the *Volkskammer*. The quorum for this purpose is two-thirds of the membership and a two-thirds majority is needed to pass the amendment (Article 83).

Referenda. If at least one-third of the members of the *Volkskammer* so request, any law may be suspended for a period of two months during which time a popular referendum must be taken on the law if requested by a petition signed by at least one-twentieth of all qualified voters. The voters themselves may force a referendum by an initiative proceeding consisting of a petition signed by one-tenth of all voters or by recognized political parties if they can prove that they represent one-fifth of the total electorate (Article 86). These elaborate provisions are intended to give the impression of a large measure of direct democracy. They, too, must be considered as "window dressing," for their use would be impossible in fact without the consent of the ruling Socialist Unity party. They might be used, conceivably, as were Hitler's referenda, to give an impression of national unity.

The flag. To add to the confusion, the East German constitution adopted the same flag as that of West Germany—the black, red, and gold of the Weimar Republic.²⁰

¹⁹ Constitutionality of laws may not be challenged in the courts but only by not less than one-third of the membership of the *Volkskammer*, the Presidium, the President of the Republic, the national government, or the *Laenderkammer*.

²⁰ The Germans have made a bitter joke about this flag. They say that the gold represents the past, the red the present, and the black the future.

PARTIES AND POLITICS

To begin with, there was no open suppression of political parties in the Soviet zone except, of course, for the proscribed Nazi party. Superficially regarded, there would appear to be as much freedom to form opposition parties as in West Germany. There are a large number of parties represented in the provisional *Volkskammer*—no less than twelve—as well as thirty-five independent members. The largest group, with 90 out of 400 seats, is the Socialist Unity party (the SED) which is composed of the former Communist party plus fellow-travelers. In theory a complete union of the old Communist party and the Social Democratic party, it is in fact a device to suppress the latter, which was by far the strongest party in the Soviet zone. Unable to proceed with their pretense of democracy without first destroying the Socialist party, the Soviet occupation authorities forced an official merger of the two parties in April, 1946. The vast majority of Socialists repudiated this action, and as they no longer had any legal existence as a party, were again forced underground as they had been under Hitler. Subsequently the SED was purged of unreliable elements. It is said that as many as 20 per cent of the original members were expelled.

“Front” parties. The strength of the SED is not to be measured by its nominal representation in parliament. There must be included seventy “secret” members from West Germany who are Communists or fellow-travelers, as well as several “front” parties such as the National Democratic party and the Democratic Farmers’ party.²¹ The “independent” members, too, are mainly professors, journalists, and others approved by the SED and sponsored by “democratic mass organizations.” Altogether it is estimated that the SED can count upon from 240 to 310 votes out of 400 in the *Volkskammer*.²²

The opposition. The only opposition in parliament comes from the Christian Democratic Union and the Liberal Democratic party which, together, have ninety seats. These have been tolerated so far and given places on the “national front” bloc ballot. The Third People’s Congress which was elected in May, 1949, and which in turn elected the provisional *Volkskammer*, was elected by means of a ballot containing only a single approved list. The list was drawn up by negotiation between the SED and the other approved parties and organizations, the strength of the actual SED representation concealed by the use of satellite parties and groups as mentioned above. The lists were presented to the voters along with the following “loaded” question: “Are you

²¹ Just as the use of “*Reich*” in West Germany is the trademark of neo-Nazism, so “*Demokratische*” in East Germany seems to be reserved for the use of Communist or crypto-Communist organizations.

²² See Joachim Joesten, “The East German State,” *New Germany Reports*, No. 14 (June, 1950).

in favor of German national unity and do you vote for the list of candidates presented by the democratic parties and mass organizations?"

Despite the absence of real opposition in the campaign, out of about 12,-000,000 valid ballots, over 4,000,000 were marked "No" and there were about 863,000 invalid or spoiled ballots. This considerable opposition of course remained unrepresented in parliament. Two thousand approved delegates, elected in this way, then elected by acclamation the 400 members making up the *Volksrat*, which turned itself into the provisional *Volkskammer* under the new constitution.

As noted above, the Christian Democratic Union and Liberal Democratic party have given some evidence of less than total acceptance of the SED program, although they have taken their allotted place in the bloc lists.²³ In December, 1950, seven Thuringian bank officials were convicted of sabotage and given jail sentences. According to the original prosecutor in this case, who had subsequently fled to West Germany, the charges were manufactured to discredit the Liberal Democrats, to which party the defendants belonged. It appears evident that complete submission to the SED policies or destruction will be the eventual fate of the other parties.

The first ministry. The first minister-president chosen by the provisional *Volkskammer* was Otto Grotewohl (SED). As required by the constitution, all parties are represented in the cabinet. The SED kept nine out of the eighteen posts which with Grotewohl's vote would give them a winning majority in any test of strength. Actually they control several other votes, those of the satellite party ministers. A new portfolio with the significant title of "state security" was created by act of the *Volkskammer* in February, 1950. It was given to an SED man.

Altogether it can be said that the too-familiar techniques of intimidation, fraud, and force are again being employed in East Germany to preserve and extend the domination of a single political party, even though this domination is partially hidden by the continued existence of other parties and "mass organizations" which are ostensibly independent. There can be no question of "national" Communism developing in Germany as it did in Yugoslavia because the Soviet control commission can ensure the unquestioned loyalty to the Cominform of key figures in the government and security police.

Economic policies. Except for the enterprises taken over entirely by the Soviet authorities as reparations and operated under orders from the Soviet Union, all economic matters are in the hands of the *Deutsche Wirtschaftsko-*

²³ The powerful Social Democratic party refused to cooperate and was therefore refused a place in the "national front" lists and so deprived of any chance of representation. Most of the political terrorism up to 1950 was directed at the leaders and members of this party who did not capitulate to the SED.

mission, the German economic committee, usually called DWK or "Wiko."²⁴ Created in June, 1947, it was reorganized in February, 1948, by an order of Marshall Sokolovsky giving it almost unlimited economic authority subject only to the veto of the Soviet control commission. Its top officials are nearly all Communists and its authority is so extensive that it might be considered as the real government of the Soviet zone. So long as both DWK and *Volkskammer* are under disciplined Communist leadership no serious conflict between the two is to be anticipated.

Industry. The economy is a "mixed" one, combining socially and privately owned enterprises. The Soviet-owned and managed corporations are in a variety of industries making about 25 per cent of the total industrial production of the zone. Besides these there are "people's" and "state firms" which together control key industries, almost all mining, over half of the metal industry, and so forth. By Soviet order these firms may not be sold to private persons or companies. Altogether these public enterprises account for about 40 per cent of the total zonal industrial production. This together with that of the Soviet firms means that only from 25 to 30 per cent of industry has been left in private hands.

Agriculture. In accordance with usual Communist practice the first move made in connection with agriculture was to carry out Lenin's slogan, "All land to the peasants," a move which is invariably popular with the mass of rural inhabitants. By the spring of 1948 about one-half of all the cultivated land in the zone (7,500,000 acres) had been turned over to new owners. These were mostly former farm laborers, small peasants, and some refugees from the ex-German areas. However, about 30 per cent was kept in the hands of states, municipalities, and the Peasants' Mutual Aid Society. Together with the DWK this association draws up an agricultural plan which is applied to every farm. The individual farmer must plant and reap according to this directive and deliver a specified amount of produce at fixed prices, regardless of the amount finally harvested. It is claimed that two-thirds of all farmers belong to the Communist-controlled Mutual Aid Society, but whether or not they belong, they are under legal obligation to abide by its directives.

An attempt was made in the summer of 1952 to push the formation of collective farms, or, more precisely, coöperative farms in which the farmers would pool their land and efforts, while retaining legal title, each to his own farm. A number of financial advantages were promised to those who would accept this program. By December, 1952, it was evident that the scheme had not met with general approval among farmers, a number of whom had fled to the West because of their fear of forced collectivization.

²⁴ This is a large body. It has 101 members: one for each 360,000 population; 15 from the various political parties; and 10 from the "democratic mass organizations."

Labor. The old trades unions that had been smashed by the Nazis were not permitted to reorganize on their own initiative. Instead, a "Federation of Free German Trades Unions" was created in Berlin with Communists in key positions, and the actual unions were fitted into this prepared framework. The Federation is one of the "democratic mass organizations" represented in the DWK and in the policy-making Politburo of the SED.

Police. Having gained control of the economy and a dominating voice in almost all tolerated organizations, the only remaining problem for the SED was the actual maintenance of physical domination. This was assured by the new police establishment. The economic arm of the party, the DWK, was given a police department of its own: the *Volkskontrolle*, which is used to stamp out the black market and other crimes against economic regulations. Ordinary criminal police work is handled by the *Kriminalpolizei*, but this body has also organized a "section five" concerned with political "crimes." This appears to be taking on the duties of political internal espionage and suppression of opposition formerly handled by Himmler's *Gestapo*. According to a statement made at Bonn in September, 1952, by Otto Nuschke, vice premier of the Democratic Republic, the security police are not responsible to the government. If true, this would mean that they must act under orders of the Soviet control commission. It would also underline the puppet nature of the East German régime.

The army. Finally, there is the *Volkspolizei* or people's police, which is in actuality the framework of an army, well supplied with light weapons and, to some extent, with heavy ones as well.²⁵ Its original officers and many of its men were recruited from German veterans captured in Russia who had joined Paulus' "Free Germany" movement in 1933 or 1944. Its clear purpose is to provide the *cadres* for a new German army under Soviet domination.

CONCLUSION

The German Democratic Republic (East German or Soviet Zone) provides an interesting case history of Soviet techniques in securing complete control of an occupied territory. Similar methods were used in Hungary and Roumania and in Czechoslovakia as well, with such amendments as were rendered necessary by the absence of a Soviet occupation force and the existence of a working democratic régime which had to be destroyed by a *coup d'état*.

Germany's future as a nation and a possible democracy is obscure. Nearly all Germans, except for a few sentimental separatists in Bavaria and elsewhere, desire a reunited Germany. Few admit any guilt, individual or collective, for

²⁵ East Germany has an air force, called the *Luftpolizei*, supplied with Russian planes. There is also an infant navy called the *Seepolizei*, and in October, 1952, it was announced that three divisions of the *Volkspolizei* had been activated with tanks and artillery.

the attempt as world domination and for the racist excesses which led to the present sorry state of affairs. It is hard to say whether the truly democratic Germans in a reunited and independent Germany would be able to control the forces striving to revive a militant German nationalism. As time passes and as tension between East and West increases, any possibility of a peaceful re-union of all Germany seems more and more unlikely. It would be a bold prophet who would dare to forecast the time when Germany can again take her old place among the free nations of Europe and the world.

Military Government in Germany. The military government period is well covered in W. Friedmann, *The Allied Military Government of Germany* (London, 1947). See also Edward H. Litchfield *Governing Postwar Germany* (Ithaca, 1953). Sharply critical accounts of military government policies are given by Delbert Clark, *Again the Goose-Step* (Indianapolis, 1949), and by Drew Middleton, *The Struggle for Germany* (Indianapolis, 1949). See also J. P. Warburg, *Germany: Bridge or Battleground?* (New York, 1947), and the official story by the American Military Governor, Lucius DuB. Clay, *Decision in Germany* (New York, 1950). The problems and policies of military government are also discussed in Carl J. Friedrich and others, *American Experiences in Military Government in World War II* (New York, 1948), and H. Zink, *American Military Government in Germany* (New York, 1947). See also J. K. Pollock, ed., and others, *Germany under Occupation, Illustrative Materials and Documents* (Ann Arbor, 1949).

State Constitutions. The constitutions of the *Laender* in all zones are printed in both German and English in *Constitutions of the German Lander* issued by the U. S. Office of Military Government (Berlin, 1948). They are discussed in R. G. Neumann's article, "New Constitutions in Germany," *Am. Pol. Sc. Rev.*, June, 1948, and in H. O. Lewis, *New Constitutions in Occupied Germany*, Foundation Pamphlet No. 6 (Washington, D.C., 1948).

National Constitutions. The text of the Bonn constitution is contained in Pollock and others, *op. cit.*: with the omission of the preamble, conclusion, and a few articles, in Norman L. Hill, Harold W. Stoke, and Carl J. Schneider, *The Background of European Government* (3rd edition, New York, 1951), pp. 488-510; J. C. Adams, W. B. Kerr, J. Park, and J. W. Pratt, *Foreign Governments and their Backgrounds* (New York, 1950), pp. 896-931; and in *The New York Times*, May 9, 1949. See also Elmer Plischke, *The West German Federal Government* (Berlin: Office of the U.S. High Commissioner for Germany, 1952); and by the same author, *Berlin: Development of its Government and Administration* (Berlin: Office of the U.S. High Commissioner for Germany, 1952). Attention may also be called to Karl Loewenstein, "The Government and Politics of Germany," Part IV in J. T. Shotwell, Editor, *Governments of Continental Europe* (Revised Edition, New York, 1952); J. F. J. Gillen *State and Local Government in West Germany, 1945-1953*, (Berlin: Office of the U.S. High Commissioner for Germany, 1953). See also E. W. Meyer, *Political Parties in Western Germany* (Washington, D.C., 1951). The student is also referred to the analysis by Carl J. Friedrich, "Rebuilding the German Constitution," *Am. Pol. Sc. Rev.*, June and August,

1949. The German Texts of the Bonn and Länder Constitutions may be found in E. R. Huber, *Quellen zum Staatsrecht der Neuzeit* (Tübingen, 1951).

The constitution of the Soviet zone "German Democratic Republic" is summarized and discussed by Joachim Joesten in No. 14 of his mimeographed series, *New Germany Reports*, "The East German State," June, 1950. A translation of the text may be found in the compilation by Amos J. Peaslee, *Constitutions of Nations* (3 vols., Concord, N. H., 1950), and selected portions of it in Hill, Stoke, Schneider, *op. cit.*, pp. 530-541. See also Mark Arnold-Foster, "The East German 'Parliament'," in *Parliamentary Affairs* (Spring, 1952).

Italy

CHAPTER XXXVI

Italy and the Fascist Era

The relations between the state and the individual are completely reversed by the fascist doctrine. Instead of the old democratic formula "society for the individual," we have the new formula "individuals for society."—Alfredo Rocco

The kingdom of Italy. Buttressed on the north by the Alps, and ribbed throughout its course by the Apennines, the kingdom of Italy thrusts itself into the Mediterranean. Or, to use Petrarch's classic aphorism

*. . . il bel paese
che Appennin parte, il mar circonda è l' Alpe.*

No country in Europe has had a longer and more interesting political history. It contains two regions which differ widely in their physical characteristics, namely, the northern or continental region which includes Lombardy, Piedmont, Tuscany, and Venetia, and the southern or peninsular division, which comprises not only Rome and its adjacent territories, but the old kingdom of Naples and the islands of Sardinia and Sicily. Napoleon Bonaparte used to say, "Italy is too long." The entire kingdom comprises about 90,000 square miles, which is slightly more than the area of Kansas. But the population of Italy exceeds 42,000,000, which is nearly that of all the American states west of the Mississippi.

Its early history. The earliest history of this peninsula is known only through the classic legends. It was then inhabited by a variety of tribes. At some time prior to 700 B.C. came the founding of Rome and in due course the sway of this city was extended in all directions until it eventually spread over most of the then known world. Thus Italy became and for several centuries remained a world empire, the center of world culture and civilization. All roads led to the Eternal City, a proud metropolis with a population of over a million.

Then ensued a long period of decline in Roman power and its ultimate col-

lapse in the fifth Christian century. The barbarians from the north came down into Italy, overran it, sacked its cities, wrecked its government, and turned the land into a desolation. Next followed the periods of Gothic, Byzantine, Lombard, and Carolingian domination—each with its own vicissitudes. Much could be written on the history of this lurid interval of five centuries from 500 to 1000 A.D., but it would not be appropriate here. It is enough to say that banditry and disorder got the upper hand in spite of all that either the civil or ecclesiastical authorities could do.

Italy in the later Middle Ages and early modern period. With the beginning of the eleventh century signs of a revival appeared. The cities, particularly in the northern part of the peninsula, began once more to grow and flourish. Princes and dukes, as well as communes and republics, were able to stabilize their power in a host of small states and to maintain a semblance of discipline although they were frequently at war with one another. By the close of the Middle Ages the time had become ripe for the welding of these jarring areas into a unified nation; but unhappily no unification was achieved. On the contrary, this civil warfare paved the way for an era of foreign domination which proved to be long continued. England and France attained the goal of unity; Italy did not. She remained a geographical expression down to the later half of the nineteenth century. Local jealousies, regionalism, foreign control, and a lack of national consciousness contributed to make it so.

The genesis of unification; the work of Napoleon. The beginnings of progress toward the unification of Italy date from the years 1796-1799 when Napoleon Bonaparte invaded the land with his ever-victorious armies and brought the whole territory under his control. Thereupon, in true Napoleonic fashion, he combined many of the small states into a Cisalpine Republic, and finally united the entire peninsula under French tutelage. To all of it he extended the Code Napoléon and the French administrative system. In this way he stamped upon Italian political and legal institutions an impress which they bear to this day. But this unification of Italy proved to be brief, for it went to pieces when the Napoleonic empire collapsed. Nevertheless it gave the Italian people a new vision and revived among them their old consciousness of a common nationality. Thus it was the rise of a Bonaparte that first created among the Italians, as among the Germans, a determination to be united under a government of their own. And, curiously enough, it was the fall of another Bonaparte (1870) that in both cases enabled this unification to be consummated.

Italy after Napoleon's fall. In 1814-1815 the Congress of Vienna met to realign the boundaries of Europe which the long wars had so rudely disturbed. One of the most difficult questions confronting the Congress was what

to do with Italy—and, as it happened, Italy had no friends at this Congress. Austria, for her own advantage and security, desired that Italy should remain disunited and weak. It was likewise Austria's ambition to dominate all the Italian states which lay within reach of her own frontier. So Italy was once more dismembered. Austria recovered Venetia and the duchy of Milan. Parma, Modena, Tuscany, Naples, and various other states were placed under foreign rulers. The Pope was confirmed in his possession of Rome and the Papal States. The kingdom of Sardinia, including Savoy and Piedmont (with the addition of Genoa), was the only one left with an Italian dynasty. Thus Italy became once again a land of shreds and patches, as it had been before the Bonapartist invasions.

The movement for Italian unity led by Sardinia. But the Congress of Vienna, although it rearranged boundaries, could not stifle the sentiment for unity and independence which had been aroused among the people. Bonaparte, after his exile to St. Helena, was enough of a statesman to foresee that no fiat of a world congress would suffice to keep the various states of Italy from gravitating together. "Italy's unity of language, customs and literature," he wrote, "must sooner or later bring all her inhabitants under one government." This prediction was ultimately fulfilled, although its fulfillment was long delayed. The nationalist sentiment attained its earliest strength in the kingdom of Sardinia which, as has been said, included Piedmont and Savoy on the mainland.

Almost all Italians were united in hating the Austrian masters of North Italy, but to secure any unified action against them was very difficult. Charles Albert, King of Piedmont, was cautious in taking the initiative and events proved his estimate of the dangers to be correct. The Pope as autocrat of the Papal States could not be counted upon to help in any move against Catholic Austria. Many Italian liberals were republicans and opposed coöperation with a monarchist government. Nevertheless, Charles Albert decided to fight the Austrians following the outbreaks of 1848, "the year of revolutions." In that year, the King of Naples and Sicily, the Grand Duke of Tuscany, the Pope, and the King of Piedmont all granted liberal constitutions to their subjects.¹ When it was learned that the spirit of revolution had reached even to Vienna, the people of Lombardy and Venetia rose in revolt and expelled the Austrian troops. In the ensuing war, however, the Austrians finally won, had re-established their rule in Italy by 1850, and the petty Italian tyrants were all firmly seated again upon their thrones. It seemed as if a united and liberal Italy were as far off as ever.

¹ Constitutions were also granted in some of the other states, notably in the kingdom of Naples; but everywhere except in Sardinia-Piedmont they were revoked during the years following 1848.

Charles Albert had to abdicate after this defeat, but his son and successor, Victor Emmanuel II, retained the *Statuto fondamentale*, the liberal constitution of 1848, although everywhere else in Italy the constitutions of that year had been revoked. Thenceforward the rise of Italy to nationhood is the story of Sardinia-Piedmont's expansion. Count Cavour, who became prime minister of Piedmont in 1852, was precisely the kind of man to organize such a movement of expansion and nationalism. Unlike the revolutionaries, Mazzini and Garibaldi, Cavour was a courtier and politician who knew how to use the great powers for his purposes. At the same time, he was a liberal and had studied the parliamentary system in the House of Commons during a period of exile in England before 1848.

The rise of Cavour. To begin with, Cavour sought to build up a strong Piedmont by introducing domestic reforms and modernizing the army. The necessary funds to pay for this were obtained by confiscating the property of most of the numerous religious orders and imposing a heavy capital levy upon those allowed to remain. This action won the applause of Italian liberals everywhere and converted many of them from republicans to constitutional monarchists.

Externally, too, he sought allies, for the events of 1848-1850 had proved that Sardinia-Piedmont alone could not beat the Austrians. So he joined England and France against Russia in the Crimean War in 1855, not because he was interested in the fate of Turkey but because he wanted to put France under a moral obligation. Subsequently he was able to induce Napoleon III to join him in driving the Austrians out of Italy although Napoleon demanded the territories of Nice and Savoy in exchange for his military assistance. Piedmont was to get Lombardy, Venetia, and a few minor states. War was provoked in 1859; the Austrians were taken by surprise, and two victories were won by the Franco-Italian allies at Magenta and Solferino; but Napoleon III, frightened by a Prussian mobilization, hastened to conclude a peace by which only half the bargain was fulfilled. Lombardy was taken from Austria and joined with Sardinia-Piedmont, but the Austrians were permitted to keep Venetia.

This *démarche* on the part of the French was a great disappointment to Cavour and to all the partisans of Italian unification; but it did not bring the nationalist movement to an end. On the contrary, it gave new virility to the cause which now aimed at nothing short of a kingdom unified from tip to toe, with Victor Emmanuel, the king of Sardinia-Piedmont-Lombardy, as monarch of all Italy. Notable progress in this direction was made when various small states (Parma, Modena, and Tuscany) ousted their foreign rulers and declared for annexation.

Garibaldi and the annexations. Under the leadership of Garibaldi, both Naples and Sicily revolted in 1860, expelled the Bourbon dynasty, and voted likewise. In this way the program of unification made headway until it was virtually complete with the exception of Venetia (which Austria retained), and Rome, with the adjacent Papal States much reduced in size, which were still under the rule of the Vatican.

The completion of unity in 1866-1870. Cavour did not live to see the completion of his work, which was delayed for another decade by reason of various obstacles. Austria could not be ousted from Venetia by the armies of Italy alone; it was necessary to wait until the Austrians were in trouble elsewhere. This opportunity arrived in 1866 and the Italians seized it without hesitation. While the Prussians were overwhelming Austria at Sadowa, the Italian armies went into Venetia and "redeemed" this portion of their homeland. They would have annexed Rome and the Papal States also, had it not been for the intervention of Napoleon III, who now reappeared in Italian politics, this time as the protector of the Pope's temporal rulership. From 1866 to 1870 a small French army guarded Rome against the Italians, but in the latter year it was withdrawn for service in the Franco-Prussian war and the Italians followed promptly on the heels of the evacuation. The Italian capital was thereupon transferred from Florence to Rome. The temporal power of the Papacy came to an end for more than fifty years, only to be re-established in a modified form by a new agreement which was concluded between the Vatican and the Italian government in 1929. Meanwhile an attempt was made to adjust the relations between the two by a Law of the Papal Guarantees which the Italian parliament enacted in 1871 but which the Papacy never recognized.

The constitution of Italy until 1948. The expansion of Sardinia-Piedmont into the kingdom of Italy did not involve the framing of a new constitution. The *Statuto* of 1848 was merely extended, stage by stage, to the annexed territories. Ostensibly this constitution remained in effect until 1948, although it was amended out of all recognition by the Fascist government of Italy. The process of amendment was simple. When the *Statuto* of 1848 was proclaimed it contained no provision for amendment. This silence was forthwith construed to mean that it could be amended at any time merely by passing an ordinary law. The leaders of the government and the courts accepted and acted upon this understanding, namely, that the written constitution of Italy, like the unwritten constitution of Great Britain, could be changed by an act of parliament.

How amendments were made. For more than sixty years, however, amendments were relatively infrequent despite the ease with which they could be made. Both parliamentarians and the people went on the principle that the

provisions of the *Statuto* should not be radically changed except for some urgent reason. Accordingly there developed a general tradition that the Italian parliament would not pass any law in conflict with the constitution (and hence amending its provisions) until after the issue had been threshed out in an election campaign and virtually decided by popular vote.

The *Statuto* of 1848 was a very short document, and general in its terms; consequently a great deal of detail was left to be filled in by laws, decrees, and usages. With the expansion of the kingdom and the increased complexity of its government, this constitution was naturally much elaborated, but its essential features underwent no great change from 1848 to 1922. It gave Italy a political system that seemed at times to be sadly lacking in executive stability, but there was no serious demand for a thorough overhauling of the fundamental law until after the close of the First World War.

Mussolini and the new order. On the advent to power of Benito Mussolini in 1922, however, this situation began to undergo rapid and drastic changes. The old ministerial instability disappeared. One dominant political party, the Fascist party, went into power and stayed there. Many essential features of the old constitution were cast off, one after another, until the government of Italy bore only a faint resemblance to that of the prewar years.

ITALIAN POLITICS BEFORE THE FASCIST ERA

The *Statuto*. The fundamental law of Italy was the *Statuto* of 1848 which, as interpreted by Cavour, provided a liberal parliamentary system similar to that of England, France, and Belgium. The king was nominal executive and chose the premier who was responsible to the Chamber of Deputies. Although generally responsive to the will of parliament, the Italian monarch never achieved the completely constitutional position of the British king but continued at times to exert influence upon the choice of premiers and even upon their tenure of office.²

Parliament. The bicameral parliament consisted of a Senate and a Chamber of Deputies. The Senate, of indefinite size, was composed of members appointed by the crown (the ministry) for life. Second chambers of this sort have never been able to equal in prestige and power the popularly elected co-chamber. The Italian Senate was no exception to this rule and because of its unlimited size, in the event of serious deadlock between the chambers, the ministry could threaten to appoint as many new senators as might be needed to break the deadlock.

The Chamber of Deputies consisted of 535 members elected by the single-

² For examples of this, see Bolton King, *A History of Italian Unity*, 2 vols. (London, 1899).

member-district system. The franchise was extended by a series of laws until by 1919 all adult Italian males had the vote.

The ministry. The ministry, as in all responsible government systems, retained office at the will of the popular chamber. It should be remembered, however, that Italy was given a democratic system without the long training in self-government that had prepared the way in some other lands. Especially in southern Italy and Sicily, illiteracy was common. Large areas of the country consisted of great estates worked by peasants in semifeudal subservience to the landlord. Under these circumstances it is easy to comprehend the temptation to manipulate elections by bribery, bullying, and other forms of "undue influence." Almost all Italian politicians succumbed to this temptation. It was unknown for a government to lose an election. Obviously the deputies returned to Rome by such a system were unlikely to feel strongly bound to their constituents or to feel that party loyalty should be allowed to stand in the way of political advancement. As a result, success in Italian politics at the ministerial level was more often the result of dexterity in wire-pulling and intrigue rather than to statesmanlike adherence to firm policy. The various parties tended to separate into blocs and factions. Governments represented the temporary alliance of a number of these blocs, drawn together less by any agreement as to policies than because of patronage and other considerations. Governments fell frequently as one party or another withdrew support, only to reappear with slightly changed personnel. Of all Italian statesmen, Giolitti, who dominated Italian politics from 1903 to 1914, was possibly the most adept at this technique of *transformismo*, as it was called. When one leg of his ministerial stool appeared to be growing wobbly he would slide it out from under him and replace it with another without losing his own political equilibrium. Despite the lack of political integrity which often characterized Italian parliamentary intrigue, the fact remains that *transformismo* facilitated continuity in leadership and policy, which was much greater in fact than the frequent changes of ministers would lead one to believe.

Cavour, indeed, had been the first to use these methods of maintaining his government in power. In foreign affairs, too, he initiated the tactics that all subsequent Italian governments imitated: to take advantage of quarrels among other nations or of their engagement elsewhere in order to gain territory or advantages for Italy. As a minor power and a late-comer in the struggle for empire, Italy could not hope otherwise to compete successfully in the scramble for land and colonies.

Politics: 1876-1915. Cavour maintained himself in power from 1852 until his death in 1861. His immediate successors depended upon conservative deputies, largely from northern Italy. Unlike Cavour, the new premiers were

unable to keep their supporters united, despite the victory over the Papacy in 1870. Conservative policies and regressive taxes led to the downfall of the Right in 1876 and the first of a series of left-wing premiers—Agostino Depretis, who with his successor, Francesco Crispi, headed the Italian governments, except for short intervals, for twenty years. During this period a number of political reforms were introduced, the franchise was extended, local government democratized, some social legislation was passed, and Italy began to try to catch up with the other European powers in the acquisition of African colonies. This attempt led to the first Ethiopian adventure and the calamitous defeat of the Italian army at Adowa. The premier, Crispi, had to take the responsibility for this and step down in favor of a premier of the Right in 1896.

All these events coincided with the rise of socialism in Italy. Crispi had attempted to suppress the socialists, and the right-wing premiers, after a short trial of conciliatory methods, followed suit. So far indeed did they go in this suppression that all democratic freedoms were endangered, and the various strong popular disapproval of the government's policies, even though the usual devices were employed to assure a government majority. Evidently, if neither Right nor Left could rule, a compromise politician might be able to keep a ministry in being. Precisely this kind of leader was found in Giovanni Giolitti, nominally of the Left, but ready to come to agreement with any group that would support him. So adept was Giolitti at parliamentary strategy that he was premier most of the time from 1901 to 1914. Despite his readiness to compromise issues in order to receive the votes of one group or another, Giolitti was essentially liberal in his views and his period saw a real growth in Italian democratic liberties. Welfare legislation was enacted, freedom of the press re-established, strikes were handled without employing the brutality of the former governments, the franchise was broadened. Under Giolitti, too, Italy made a successful grab for African colonies. A contrived war with Turkey in 1911-12 enabled Italy to claim as spoils the former Turkish possessions, Tripolitania and Cyrenaica.

The First World War (1914-1918). Italy entered the First World War, despite socialist opposition and despite the warnings of Giolitti, entirely in order to receive large territorial grants which had been promised in a secret treaty by France and Britain. Much of this new Italian land was to come from the Austro-Hungarian Empire. But the Wilsonian peace did not provide all the prizes Italians had hoped for. Their military losses had been great and they felt outraged and betrayed. There was a reaction against the government that had led them to such disasters and disappointments. Furthermore, the post-war governments seemed quite unable to cope with the economic distress caused by an inflated currency and general unemployment.

The Left: *Popolari* and the Socialists. Under these conditions the mass of Italian voters displayed a strong tendency to turn toward the political Left. There were two chief beneficiaries of this tendency: the *Partito Popolari* (Populist party) of Don Luigi Sturzo, a parish priest, and the Socialists. The Populist party was reformist and nonrevolutionary; the Socialists, or the larger part of them, were distinctly revolutionary, inspired as they were by Lenin's example in Russia. In the elections of 1919 the *Popolari* got 100 seats and the Socialists 156. Orthodox Marxism was held to forbid Socialist coöperation with non-Marxist parties and the Socialists, therefore, despite the fact that they were the largest single party, refused all cabinet seats and used their parliamentary strength merely to harass the government while stimulating various kinds of revolutionary "direct action" outside. The showdown arrived more or less by accident when the workmen in a Milan factory responded to a lockout threat by refusing to leave the factory. Really a kind of sit-down strike, this behavior was imitated in other factories and was widely regarded as a genuinely revolutionary attempt to seize political power. Some of the factory owners urged the government to oust the workmen by military action and civil war was a distinct possibility.³ The government refused to be stampeded into action, the moderate Socialists gained control of the strikers, and a few concessions to the unions led to the collapse of the revolutionary attempt, if such it was.

The Socialists themselves soon split into three parts, one becoming the Italian Communist party accepting instructions from the Third International, a middle group becoming the Italian Socialist party under Lazzari, and the Third, right-wing group of Tuarti and Modigliani calling themselves the Unitary Socialist party.

Once the factories had been evacuated, the impetus of any possible revolution at that time had been lost. Italy was in no immediate danger of following Russia into Bolshevism. But the propertied and middle classes had been badly frightened. To them, the government's peaceful solution of the factory seizures was a mark of weakness rather than wisdom. A new movement was gaining ground which made its appeal to young men who were not Socialists and wanted a restoration of prosperity and order without a Socialist solution. Strangely enough, this movement was led by an ex-Socialist editor, Benito Mussolini.

Mussolini had been a revolutionary Socialist in his early days, but broke with the party when he came out for Italy's intervention on the Allied side in the First World War. After the war he presided over the formation of the

³ Count Carlo Sforza told how Prime Minister Giolitti diminished the belligerency of one factory owner by suggesting that, in complying with the manufacturer's urgent request that artillery be used to oust the strikers, this man's plant be chosen as the first target.

Fasci di Combattimento, one of a number of patriotic groups which proliferated in the political vacuum existing between the Socialist Left and the government. Mussolini's organization differed from the others in that its leader was a master demagogue experienced by years of political editing and writing and that he set no bounds to his ambitions. at first he claimed to be far to the left of the Socialists and his political fortunes did not flourish. In the 1919 elections he himself was badly beaten at the polls and not a single Fascist was elected to parliament. As soon as Mussolini began to advertise himself as a champion of Italy against Bolshevism and to organize his groups into paramilitary formations, his following began to increase. He borrowed the black-shirt uniform from the *Arditi* or shock troops of the war period. It is said that the tasseled cap had been invented by D'Annunzio. Certainly the Roman salute and other mementos of the glorious past had been used by the soldier-poet on his romantic adventure to capture Fiume. All of this had the double attraction of a dashing uniform and patriotism. The very young especially were attracted and soon were sallying forth to smash union halls and wreck Socialist printing presses. The government encouraged these activities as an extralegal way to deal with the Socialists who were too strong in the Chamber of Deputies to be directly attacked politically. Giolitti thought that the *Fascisti* could be very useful to him, and with his blessing they proceeded to redouble their violence against the Socialists. They were given arms from government stores and the police were ordered not to interfere. Then Giolitti secured a dissolution and called an election for May 15, 1921. Under the list system of proportional representation then in force, Fascists shared the lists with Giolitti's supporters in alliance against the Populist and Socialist Left.

The result of the election was a Chamber so thoroughly divided that even the skilful Giolitti was unable to construct a viable ministry. The Fascists won thirty-five seats, the Socialists lost a few, and the Populists gained a few. It was time for the Fascists to become a political party as well as a movement. The new Bonomi government tried, too late, to disarm the Fascist squads. This was now impossible without a wholesale replacement of top police officials. The *Fascisti* were by this time all-powerful in many areas, commandeering transport, ordering the replacement of municipal officials, and so forth. The government was vacillating in the face of this situation and none of the parties seemed able or willing to form any kind of strong coalition against the Fascist menace.

The march on Rome. The Fascists, for their part, were unable to form a government in the ordinary way, as they and their allies were a small minority in the Chamber. In order to achieve power a coup d'état would be necessary and even Mussolini, who was as cautious as he was ambitious, was finally

convinced that the government would not prevent such an attempt. The signal was the march on Rome of Fascist squads organized by four of the leading Fascists. Mussolini, ever cautious, awaited in Milan the outcome of this maneuver. When, at last, the premier, Facta, tried to get royal approval for a decree declaring a state of siege which would have permitted martial law and the use of troops against the black shirts, the king refused to sign. Nothing further was in Mussolini's way and he hurried to take the train to Rome and accept the royal invitation to form a government.

Mussolini becomes prime minister. At once he warned the Chamber that it must follow the new government or be dissolved. The Chamber hastened to do as it was bidden. It gave assent to the measures laid before it, notably to the electoral law of 1923. For the first time in fifty years Italy was under the rule of a prime minister who did not have to placate any element among the deputies. Then ensued a gradual revamping of the whole government. With a stern hand Mussolini proceeded to cut down governmental expenses and to balance the budget. He dismissed public officials in large numbers but replaced them, in many cases, with trusted Fascists. Nor did he scruple to crush opposition and stifle criticism wherever they showed themselves. From the outset he used the whole power of the government to curb the opposition press and to liquidate what was left of Communist leadership.

The new electoral law (1923). Then Mussolini proceeded to secure a Chamber of Deputies that could be counted upon to give no trouble at critical moments. Under the provisions of a new electoral law (1923) it was arranged that the people should vote for parties, not for candidates. The ballots were to contain party symbols, not names, and the voters were merely to choose between these symbols. Then, when the votes in the whole kingdom were counted, the party obtaining the largest vote was to receive two-thirds of all the seats in the Chamber, the successful candidates to be taken in order from a list previously prepared by the party. The minority parties were to have seats allotted to them in proportion to the number of votes polled. The idea was to make sure that some one political party would be assured of a safe majority in the Chamber, thus putting an end to bloc government and ministerial instability.

And the general election of 1924. The new electoral law received its first test at a general election in 1924. The Fascist party, as was intended, stood highest at the polls and secured two-thirds of the seats under this system of "unproportional representation." But the other parties, Liberals and Socialists, formed a vigorous minority, and their criticism of the government on the floor of the Chamber sometimes became more outspoken than the Fascist leaders felt inclined to tolerate. Repressive measures were used to silence them. A

prominent Socialist deputy, Matteotti, was abducted and "taken for a ride" in orthodox Chicago fashion. The affair created a great commotion and the non-Fascist members of the Chamber (known as the Aventine bloc) withdrew from its sessions.⁴ But no attempt was made to coax them back; the Chamber went along with its work as a virtually undiluted Fascist body. For a time Mussolini took most of the ministerial posts for himself; then when his political reforms had been accomplished he distributed some of them among his chief lieutenants, retaining for himself the posts of prime minister (head of the government) and several other portfolios.

THE CORPORATIVE STATE

A corporative state established. With full political power placed in their hands, the Fascists now proceeded to transform Italy into a "corporative" state. It was part of their program, adopted in 1922, that the economic organization of the country should be reconstructed. While retaining the capitalistic system and the institution of private property, this program provided for the establishment of "corporations" which would bring employers and workers together, thus manifesting the national solidarity and increasing the productive capacity of the nation. Immediately after Mussolini's advent to power, therefore, the government proceeded to break up the Italian trade unions which were under Socialist domination. In their place "syndicates" of workers were organized under Fascist leadership. Similar organizations were developed among employers and professional men. Ultimately the two were brought together, through their respective representatives, in bodies known as corporations.

The Charter of Labor (1927). This general arrangement was developed in detail, regularized, and given a firm legal basis by the Charter of Labor (1927), a famous document of thirty articles.⁵ An Italian declaration of the rights of man, it professed to be based on the principle that the government is the guardian of all economic rights, whether of employers or workers. "The Italian nation," it began, "is an organism whose aim, whose life, and whose means of action are superior to those of the individuals who constitute it." Labor in all its forms, intellectual, technical, and manual, was declared to be "a social obligation." The right of both employers and workers to organize was recognized, but only under the control of the state and in such manner as the government prescribed. No organization of employers or workers, except those officially recognized, was permitted to function in the interests of its members, and no organization was to be given this official recognition if af-

⁴ This was a traditional way of expressing opposition but it served on this occasion merely to remove effective parliamentary opposition to the growing dictatorship.

⁵ An English translation may be found in W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937), Part III, pp. 44-50.

filiated with any international body. This ruled out all Communist and Socialist parties as well as the Masons, Rotary International, and indeed any organization to which the Fascists objected.

The corporative system had much in common superficially with the plan of the Guild Socialists. As worked out in Italy, it was merely a façade for the economic dictatorship of the Fascist government. The control was entirely hierarchical and there was no self-government either by labor or capital.

Gradually the dictatorship extended itself into all fields. In 1926 the Special Tribunal for the Defense of the State was established. Its judges, many of whom were untrained in the law, consulted nothing but their Fascist consciences and were bound by no procedural code in dealing with enemies of the régime. In the same year local government was placed under the absolute control of the Rome-appointed prefects.

The Fascist governmental system. Just as the Communist party organizations in the USSR parallel all governmental bodies, so in Mussolini's perfected dictatorship, the Fascist party had a body or an official as the "opposite number" of every governmental agent or agency. At the top, parliament had beside it the Grand Council of Fascism. Parliament, indeed, had been reduced to a Fascist clique, and it faithfully passed those measures that Mussolini reserved for its action instead of the usual executive decree. It had been reduced to this status by an electoral law of March, 1928. Under the law the Chamber was elected *en bloc* from a list chosen by the Grand Council of Fascism. The Grand Council was given a list of 1,000 names by various authorized associations, mainly from the confederations of employers and employed. To this list might be added other names at the discretion of the Grand Council, which then chose 400 to compose the list of parliamentary nominees. This single list was then presented to the electorate which could vote "yes" or "no" or simply remain at home if they dared to risk the displeasure of the Fascist authorities. The law contained provision for competing lists, but, of course, none was ever presented. The Chamber, thenceforward, consisted entirely of obedient Fascists.

The Grand Council of Fascism. The Grand Council of Fascism had been created in 1923 as part of the rigid hierarchy imposed upon the hitherto loose Fascist organization. It was made an integral part of the governmental system in 1928. It consisted of some two dozen leading Fascists including the chief of the government, the secretary of the party, and, as life members, the four leaders of the march on Rome. In addition there were several members *ex officio* as holders of important governmental posts, together with others nominated by *Il Duce* (Mussolini). It was convened only at the order of Mussolini and discussed only the matters he laid before it. Presumably, had the régime

continued beyond Mussolini's death, it would have chosen his successor.

The party. The hierarchial system prevailed throughout the structure of the National Fascist party. At every level the watchwords were: "Believe, obey, fight." At no level was there free discussion or any vestige of democratic decision. Mussolini named, promoted, and dismissed all principal officers of the state and the party. They in turn appointed their subordinates, and so down the line to the lowest ranks. Clearly this was no longer a political party at all, but a ruling, self-appointed, and self-perpetuating élite with all power enjoyed by the senior hierarchs subject to the overriding authority of *Il Duce*.

THE FASCIST PHILOSOPHY

To begin with, as Mussolini said, Fascism was "deeds, not words." Only after its victory did Mussolini and others pause long enough to rationalize their behavior and acquire for it a philosophy and a *raison d'être*. Briefly it was based upon the *mystique* of the nation. It held the nation to be the one permanent and valuable social entity. Individuals, even whole generations, were to be regarded merely as the momentary trustees of the national interests. Fascists were, by definition, true patriots, and so the proper people to be entrusted with the national destiny under the unerring guidance of their leader, who was "always right." Democracy, with its welter of conflicting interests and its struggle between contending parties, each representing a different approach to political problems, was to be supplanted by a united Fascist élite controlling the state in all respects and providing strict justice in social relationships at home, while preparing for that imperial expansion which is the mark of all great nations. The problems of who is to pick the leader and how he is to be made responsible were not discussed. Fascism, it can be said, was a simple faith rather than a genuine philosophy of government, and its primary appeal, as with Nazism, was to the disinherited and desperate who delighted in the discipline and pageantry of a "movement" and who found outlets for their frustrations and wounded national pride in violence directed against their political foes. Its secondary appeal was to the industrialists and landowners who saw in it a guarantee against Bolshevism and who were sure that they could "manage" the Fascist hierarchs.

THE END OF FASCISM

It is unnecessary to recount in detail Mussolini's imperial adventures in Africa, Albania, and Spain, and finally the disastrous attempt to reap the fruits of Nazi victories by declaring war on a prostrate France in June, 1940, and to invade a supposedly prostrate Greece. Hitler was compelled to come to the aid of the defeated Italian armies in Yugoslavia and Greece and thenceforward the Fascist government simply took orders from Berlin.

The Badoglio government. The Italian people, including many important Fascists, had been against Mussolini's war policies from the outset. As the war dragged on and defeat became more and more inevitable, war-weariness changed to outright rebellion. The signal was given by the industrial workers of the north who defied both Fascist police and Hitler's Gestapo in widespread strikes during March, 1943. The Fascist Grand Council, which had not met in nearly four years, assembled on July 24 and passed a motion by 19 votes to 7 which, in effect, demanded Mussolini's resignation; and Mussolini was arrested at once by army officers. The king then appointed Marshal Badoglio as prime minister and Badoglio picked a cabinet containing several Fascists but no representative of the democratic underground operating behind the German lines. Badoglio hoped to save as much of the old order as possible, but his situation was extremely difficult. The underground wanted peace at once. The German army was in virtual control of the country and, so far, the Allies were in Sicily only. Badoglio decided to sue for an armistice which was given on September 3. The king and government had to flee to southern Italy to avoid German capture, Mussolini was rescued by German paratroopers, and for more than a year Italy was divided in two. In the north, Mussolini set up a rump Fascist régime called the Fascist Republican government which depended upon a few die-hard Fascists and the Gestapo to enforce its authority. It was opposed by practically the entire population as well as by partisan bands who fought Nazis and Fascists alike with remarkable courage and tenacity.

The six underground parties. As the American and British troops gradually forced the German armies northward, Italian political life began to revive. The Allied military government continued to operate behind the lines, but as more and more of Italy was liberated, the anti-Fascist underground emerged and inherited local government powers in many areas. These parties, from Right to Left, were the Liberals, Labor Democrats, Christian Democrats, Action party, Socialists, and Communists. All opposed the ex-Fascist Badoglio and his government, but they were divided on the issue of continuing the monarchy. It became evident that Badoglio could not continue to govern without these parties. The Soviet government unexpectedly recognized the Badoglio government, but the reason for this action was soon explained. A group of Communist exiles, including the able leader Togliatti, returned at once to Italy and took a leading part in negotiations for the inclusion of all six of the underground parties in a new Badoglio government. The condition they made was the retirement of King Victor Emmanuel and the succession as head of state of his son, Prince Humbert, under the title of "Lieutenant General of the Realm." It was further stipulated that Badoglio would resign as soon as Rome was liberated.

The Bonomi government. This event took place in June, 1944, and Prince Humbert at once asked ex-premier Ivanoë Bonomi to form a government. This, too, was composed of the six parties. All agreed that Italy would have to have a new constitution and that elections for a constituent assembly should await the final expulsion of the German armies and the destruction of the Fascist Republic.

Resistance groups in the north. Beyond the fighting front in the north, local committees were formed similar to the southern committees, and representing all but one of the six resistance parties. These well-organized resistance units were in touch with the Allied command, which agreed to permit them to exercise temporary control in the event that they were able to seize power in advance of the arrival of the Allied forces.

Dissension among the six parties as to the extent of the power of the committees in the details of local government brought about the fall of the second Bonomi cabinet in June, 1945. A leader of the northern resistance movement, Ferruccio Parri, was even less successful in forming a stable government. In September, he was succeeded by the leader of the Christian Democrats, Alcide de Gasperi, whose political skill enabled him not only to reconcile temporarily the differences which had arisen among the parties, but also to strengthen his position as time went on.

In the meantime, Mussolini's Fascist regime in the north, based entirely upon German force, attacked its enemies, the Italian people, with all the ferocity of a cornered rat. All those within Mussolini's grasp who had been concerned with his dismissal by the Grand Council, including his son-in-law Ciano, were sentenced to death and shot. Wholesale execution of hostages took place in reprisal for underground resistance activities which constantly increased despite Fascist savagery.

Mussolini's death. As the Allied advance progressed, the Fascist Republic shrank in size and lost in force. The liberation of Rome dispersed the ministries among several northern cities. It became more and more evident that the *Duce* was virtually a prisoner of the Nazi command, and that whatever power the neo-Fascists possessed had become decentralized and wholly dependent upon the German troops. Eventually the resistance groups were able to seize such important cities as Milan, Genoa, and Turin before the arrival of the Allied forces. It was members of these groups who found and killed Mussolini in his last hiding place at Lake Como and exhibited the dead body of the architect of Fascism in a Milan square which had seen the slaughter of partisan hostages.

The Deputazione Provinciale. In the interim between the Allied landing in Sicily, in July, 1943, and the final capitulation of the German army in

northern Italy, May, 1945, local administration passed gradually under control of the Italian government. In each province, the Fascist prefect was replaced by one appointed by the government. Provincial advisory bodies (*Deputazione Provinciale*), varying in number according to the size of the province, were appointed by the prefects in agreement with the local committees of national liberation. The six political parties who made up the committees were represented in these advisory bodies. In each commune, a mayor and a local junta were appointed in the same way.

The Consulta. As soon as possible after final liberation, the central government took steps to draw up electoral lists, to arrange for local elections, and to provide for the election of deputies to a constituent assembly which would draw up a constitution and act as an interim government. To assist in these tasks, a consultative assembly (*Consulta*) of 429 members was appointed, drawn from lists put forward by the various political parties, trade unions, and professional groups. After a half year of deliberation, the *Consulta* succeeded in putting in motion the machinery of representative government. In the local elections which were held over a period of several months in 1946, communal councils were chosen, which in turn elected a mayor and a local junta. These were the first free elections the Italian people had enjoyed since the introduction of Fascism, and they marked the first appearance of women at the polls. They likewise indicated that popular opinion had crystallized in favor of three political parties—Christian Democrats, Socialists, and Communists. The combined vote for these three parties was more than three times the total of all the other parties together. The function of *Consulta* came to an end with two important decrees, one providing for the election of a constituent assembly, and the other for a referendum on the question of a monarchy.

The election of the constituent assembly. The 556 deputies to the constituent assembly were elected in June, 1946, on the basis of proportional representation among the political parties. Eligible to serve as deputies were citizens of either sex who had reached the age of twenty-five, with the exception of certain ex-Fascists, criminals, and others. Eligible as electors were all Italians who were of age, with about the same disqualifying reservations. As the earlier municipal elections had indicated, the majority of seats were won by the three major parties, the Christian Democrats obtaining 207 seats, the Socialists 115, and the Communists 104.

The vote on the monarchy. On the same day, the voters recorded their preference for a republic in the proportion of approximately 6 to 5. King Victor Emmanuel had retired from the political scene in June, 1944, with the issuance of a decree naming Crown Prince Humbert the Lieutenant General of the Realm. About a year later, Victor Emmanuel officially abdicated in favor of

Humbert, who assumed the title of Humbert II. When the latter, as Lieutenant General, signed the decree providing for the referendum, he had agreed to accept the decision of the people, but his final proclamation at the time of his quitting Italy left in doubt his attitude regarding the future. In view of the outcome of the referendum, one of the first duties of the constituent assembly was to elect some one who would assume the duties formerly discharged by the crown. Enrico de Nicola, an ex-senator from Naples, was named "Provisional Head of the State."

The constituent assembly. The assembly was composed of a faithful representation of all important elements in Italian politics. There was a substantial leavening of pre-Fascist statesmen, such as the old but vigorous Orlando, who had represented Italy at Versailles in 1918; Count Carlo Sforza, who had been Italy's foreign minister several times; Ivanoö Bonomi; the philosopher Benedetto Croce; and others of international repute. There were also a number of pre-Fascist parliamentarians of lesser note, but the bulk of the assembly was made up of new men, the leaders of the underground groups that had fought Mussolini and the Nazis in the streets of Rome and Milan, the Venetian marshes, and the hills of Piedmont and Lombardy.

Its work. The principal task of the assembly was to draw up a new republican constitution. The fact that this took a year and a half to accomplish is a reflection of the constant disagreement between the Marxist and non-Marxist deputies who were about equal in numbers. The actual drafting was entrusted to a committee of seventy-five who were chosen by proportional representation among the parties. In January, 1947, the committee submitted its draft constitution to the assembly, which then took almost a year to discuss, amend, and adopt the individual articles. Finally the entire constitution was adopted on December 22, 1947, by a vote of 453 to 62, the latter figure representing the vote of the extreme Right.

The history of the *risorgimento* and pre-Fascist Italy is covered in the works of Bolton King. *The Life of Mazzini* (London and New York, 1911), and *A History of Italian Unity*, 2 vols., rev. ed., (London, 1924). Other useful histories include W. R. Thayer, *The Life and Times of Cavour*, 2 vols., (Boston, 1911), and G. M. Trevelyan, *Garibaldi and the Making of Italy* (New York, 1911). The standard Italian history by Benedetto Croce may be read in a translation by C. M. Ady, *A History of Italy, 1871-1915* (Oxford, 1929). H. R. Spencer, *Government and Politics of Italy* (Yonkers, 1932), describes the pre-Fascist governmental system. For the politics of this period see Giovanni Giolitti, *Memoirs of My Life* (London, 1923); Carlo Sforza, *The Makers of Modern Europe* (Indianapolis, 1928); and Luigi Struzo, *Italy and Fascismo* (New York, 1926).

The Fascist revolution has been described in many books, most of which are

strongly partisan one way or the other. The Fascist viewpoint is taken in G. A. Chiurco, *Storia della rivoluzione fascista 1919-1929*, 5 vols. (Florence, 1929); Alexander Robinson, *Mussolini and the New Italy* (London, 1929); and J. S. Barnes, *Fascism* (New York, 1931). Other viewpoints are displayed in William Bolitho, *Italy under Mussolini* (New York, 1926); Ivanoö Bonomi, *From Socialism to Fascism* (London, 1924); Giacomo Matteotti, *The Fascisti Exposed* (London, 1924); Gaetano Salvemini, *The Fascist Dictatorship in Italy* (New York, 1927); H. W. Schneider, *Making the Fascist State* (New York, 1928); and René Albrecht-Carrie, *Italy from Napoleon to Mussolini* (New York, 1950).

Fascist doctrine was authoritatively stated by Mussolini himself in his article, "The Doctrine of Fascism," which appeared in Vol. XIV of the *Italian Encyclopedia*, translated and distributed by the Italian government. His ideas may be studied *in extenso* in the official *Scritti e discorsi di B. Mussolini*, ed. V. Piccoli, 11 vols. (Milan, 1934-1938). See also the apologia by Alfredo Rocco, "The Political Doctrine of Fascism," *International Conciliation*, No. 223 (October, 1926), and the discussion by Mario Palmieri, *The Philosophy of Fascism* (Chicago, 1936). Finer's *Mussolini's Italy*, mentioned below, contains an excellent short discussion of Fascist theory. See also John H. Hallowell, *Main Currents of Modern Political Thought* (New York, 1950).

The details of the Fascist government system are described in numerous textbooks. Among them may be mentioned Herman Finer, *Mussolini's Italy* (New York, 1935); G. A. Borghese, *Goliath, the March of Fascism* (New York, 1937); H. W. Schneider, *The Fascist Government of Italy* (New York, 1935); H. A. Steiner, *Government in Fascist Italy* (New York, 1938); Arnold J. Zurcher, "The Government and Politics of Italy" in James T. Shotwell, ed., *The Governments of Continental Europe* (New York, 1940); and the previous edition of this text. For the fall of fascism and World War II, see Benito Mussolini, *The Fall of Mussolini: His Own Story* (New York, 1948); Galeazzo Ciano, *The Ciano Diaries, 1939-1943* (New York, 1946); Pietro Badoglio, *Italy in the Second World War* (London, 1948); Benedetto Croce, *Croce, the King and the Allies* (New York, 1950); and Elizabeth Wiskemann *Italy* (Oxford, 1947).

CHAPTER XXXVII

The New Italian Constitution and Its Workings

While stands the Coliseum, Rome shall stand.—Byron

Its general nature. The constitution of the Republic of Italy follows the general pattern of a parliamentary republic. The chief of state and nominal executive is a president. The government is entrusted to a prime minister and cabinet who are at all times responsible to parliament. Parliament is composed of two chambers with one house representing the people at large and the other representing regions.

As in France, the new constitution contains a long bill of rights. Indeed, more than one-third of the entire document is devoted to this subject. It goes into great detail as to individual and social rights and duties and forecasts an economic program for the guidance of the government. This will have as much significance as events and subsequent legislation give to it.

The preamble (fundamental principles). To begin with, Articles 1 through 12 are grouped under the heading of "Fundamental Principles." Italy is declared to be a democratic republic "founded on work."¹ Sovereignty belongs to the people. Social equality and the right to work are recognized. It is the duty of the government to promote economic and social justice for all alike. Local autonomy and administrative decentralization are to be promoted. "The State and the Catholic Church are, each in its own order, independent and sovereign." The Lateran agreements continue (Article 7).² International law is

¹ This mystifying phrase is the compromise result of a defeated attempt to describe Italy as "a democratic republic of workers" with Marxist connotation.

² An abridgement of the text of the Lateran agreements may be found in Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 183-188. This article is not amendable by ordinary process. According to Article 7, any change requires Papal consent. The inclusion of the Lateran agreements as a permanent part of the constitution was possible over United Liberal protests only by the combined vote of the Christian Democrats and the Communists. The latter wished to prove to the rural Italians that they were not anticlerical, as a point of political strategy at that moment.

upheld and war repudiated as a means of settling international disputes, and Italy agrees to enter an international system requiring limitation of national sovereignty in order to assure peace.

THE BILL OF RIGHTS

Articles 13 through 54 deal with the civil, ethical-social, economic, and political rights and duties of citizens. The usual individual freedoms from illegal arrest, search, and so forth are included. Freedom of travel, assembly, and social grouping is permitted, but not the formation of secret or political military societies. Freedom of press and religion is guaranteed and the proper protection of the rights of accused persons. The liability of officials for criminal or tortious acts is outlined, as well as the state's liability in civil proceedings.

The family is declared to be a special subject of state concern. Indigents are to receive free medical care. Education is free and obligatory for at least eight years of schooling. Scholarships, family allowances, and other aids permit further education for the worthy. Private corporations and individuals may establish schools.

Labor is to be the subject of protective legislation, and freedom of union organization is guaranteed providing the unions are democratically organized. Unions may strike subject to legal regulations. Private enterprise, too, is free within controls intended to prevent antisocial abuses. Essential public services or monopolies may be expropriated by the state with indemnity. The law regulates the use of land and promotes agricultural reform. The right of workers to "collaborate" in management is recognized.

It is evident that some of the above rights and duties are of Marxist or at least leftist inspiration and that others are the result of compromise. For example, the equivocal right to collaborate in management was clearly the result of Marxist pressure, but its implementation would depend upon how effective organized labor can be in compelling management to accept the advice of the labor councils. On the other hand, the declaration in favor of free enterprise, the Lateran agreements, and the vagueness of the references to land reform represent Christian Democratic strength. The party failed, however, in its attempt to outlaw divorce by constitutional provision.

Political rights. Articles 48 through 54 detail the right to vote and to hold office. Universal adult suffrage obtains and in general, within necessary legal requirements, all offices are open to all citizens. Curiously enough, the "ability to pay" principle of taxation is written into the constitution at this point (Article 53), as is the obligation to perform military service (Article 52).

PARLIAMENT

Part II of the constitution deals with governmental structure. The bicameral legislature represents a triumph for the conservatives. As in France, the Marxists fought hard for a single chamber.³ The two chambers are as equal in power as can be provided by constitutional law. Both must approve all legislation and the government must have the approval of both (Article 94).

The Chamber of Deputies. The Chamber of Deputies is elected by direct suffrage with one deputy for each 80,000 persons. Deputies must be at least twenty-five years old. The election is for a maximum of five years except in case of war.

The Senate. Senators are elected from regions with one senator per 200,000 or major fraction thereof. The smallest region, the Valle d'Aosta, has a single senator; all others have six or more. Senators must be forty years of age or older, and the senatorial electorate consists of citizens aged at least twenty-five. There may be added to the Senate by presidential nomination a maximum of five senators of eminence in cultural fields. Ex-presidents, too, are automatically senators for life. Elected senators hold office for six years which makes their election coincide with that of the deputies only once every thirty years unless there is a dissolution of both houses during that period.

Legislation. Bills may originate with the government, any member of either chamber, and by popular initiative. With the exclusion of certain matters such as tax and budgetary matters and treaty ratification, a popular referendum may be demanded on legislation. Limits are placed upon the government's right to issue decree-laws designed to assure the supremacy of parliament at all times. After passage, the bill goes to the President of the Republic who will promulgate it within a month or return it to parliament with a reasoned request for reconsideration. If again passed, the president must promulgate the law.

THE PRESIDENT OF THE REPUBLIC

Election. The Italian president occupies a position very similar to that of his French counterpart. His election, too, is by a similar method. The parliament meets in joint session of the two chambers and is joined by regional delegates elected by the regional council by proportional representation. This body elects the president by secret ballot. If no candidate receives a two-thirds majority in either of the first two balloting, an absolute majority is sufficient to elect. The president must be at least fifty years of age. He is elected for a term of seven years. There is no vice president, again as in France, but the presi-

³ Amusingly enough, the Marxists quoted Washington and Franklin against upper chambers during the constituent debates, while the Christian Democrats quoted Stalin in favor of an upper chamber with equal powers!

dent of the Senate is entitled to act in case of the president's incapacity until a new presidential election is held.

Powers. The President of the Republic is the nominal custodian of executive authority. He is the chief of state, commander-in-chief of the armed forces, promulgates all laws, calls parliament into session, dissolves either or both chambers, and so forth. His actual position is indicated by Articles 89 and 90. He is not responsible for his official acts, none of which is valid unless countersigned by a minister who is responsible for it or, in the case of certain acts, unless it bears the signature of the premier as well.

THE GOVERNMENT

As is usual with parliamentary governments, the nominal executive, in this case the President of the Republic, appoints the president of the council of ministers (premier) who then picks his ministerial colleagues. The latter are then appointed by the president. A new government must ask for and receive a vote of confidence by the roll call method within ten days of its formation. Thereafter it may be ousted only by a similar formal roll call vote after an interval of three days following a motion of no confidence signed by at least one-tenth of the total membership of parliament. A failure by parliament to accept a government bill does not require the government's resignation.

Cabinet stability. This attempt to secure more ministerial stability than was customary in the old Chamber of Deputies is, of course, of little real significance. Governments will be stable or otherwise, depending upon their degree of control over parliament, regardless of legal restrictions placed upon the method of voting no confidence. Indeed, the very strong position of the Senate, coupled with the fact that in a few years' time its members probably will have been elected at a widely separated election from the members of the Chamber of Deputies, adds a new element of uncertainty not found in the pre-Fascist parliaments. It seems more than possible that the Senate and Chamber may come to represent different party groupings, with the political center of gravity at quite different places in the two houses. As the government, under the constitution, must please both chambers at all times, one can imagine a situation in which it would be impossible to form a government at all. One may assume that the deadlock would be broken in such a case by the dissolution of both houses by the president and the election of a new parliament.⁴

National council of economy and labor. The Italian constitution sets up, in the current fashion, an economic advisory council called the national council of economy and labor. The language of Article 99, which provides for

⁴ But it should be noted that he may not exercise the dissolution power during the final six months of his term of office (Article 88). A deadlock during this period might be unbreakable.

this council, does not go into detail except to indicate that experts, management, and labor will be represented. Its precise functions are left to be determined by law, but it is given legislative initiative within limits to be set by law. It is essentially an advisory body and may have much or little influence upon parliamentary action. Judging by experience elsewhere with such organs, it is likely to have little influence.

The judiciary. The judicial system of Italy is similar to that of other Roman law countries in that there are separate systems for ordinary and administrative justice.

Provision is made for a superior council of the judiciary with general supervision over judicial personnel, appointments, promotions, transfers, and disciplinary actions. The council is composed of the President of the Republic as president, high officials of the Court of Cassation, representatives of the regular judiciary elected by the bench, and professors of law and experienced lawyers elected by parliament in joint session. This body is designed to guarantee the independence and honesty of the judiciary who are career men, as in France, appointed from lists established by competitive examinations. In providing thus for an independent career judiciary, the constitution-makers were mindful of the rankly partisan injustice of Mussolini's special courts.

The regular courts. The constitution does not deal with the judicial system in detail. This is left to ordinary law. In fact, the new constitution has left unchanged the customary Italian court system as it existed before the introduction of special party courts by the Fascist dictatorship.

At the bottom is the Italian equivalent of the justice of the peace. He is an unsalaried official called the *conciliatore* who is little more than a mediator. The lowest regular judge, called a *pretor*, handles minor civil and criminal cases. Appeals from his decisions lie to a tribunal which has a bench of three judges. The tribunals also have original jurisdiction in more important or serious civil and criminal cases. From the tribunal a case may be appealed to the regional court of appeals with a bench of five judges. This court gets civil cases on appeal only but may take very serious criminal cases in the first instance. When it does this, instead of five judges, the bench consists of two judges and five lay assessors chosen from special categories of experts such as psychiatrists and sociologists.⁵ At the top of the regular judicial hierarchy is the Court of Cassation with a bench of seven judges. It is a court of law and not of justice,

⁵ This was a Fascist innovation introduced by Mussolini's first minister of justice, Alfredo Rocco, as a substitute for the jury system. Rocco was also responsible for the criminal code which still obtains, and his successor Grandi for the civil code. Both represented much needed revisions of outdated nineteenth-century codes, but Rocco's criminal code in particular is ill suited to a democracy. Its penalties are savage in some cases and it lists as crimes acts which are a normal expression of political opposition. The chief defect of Italian civil procedure is that it makes for long delays in the settlement of cases.

deciding legal points only, including conflicts of jurisdiction between the ordinary and the administrative courts.

Administrative courts. A citizen who challenges the validity of an administrative decision has the right to bring the matter before an administrative court. In contrast with the French system, his personal rights, even as against an official in connection with an official action, are handled in the ordinary courts. The Council of State is the chief administrative court with final decision as to the correctness and validity of administrative acts. It is provided for in the constitution.

The court of accounts. The constitution also sets up a court of accounts (*corte dei conti*) which performs functions related to government spending. It reviews the budget, audits the books of the administration, controls the financial management of organizations receiving state aid, and reports directly to parliament. It must also approve all governmental decrees before they go into effect, a duty which in France belongs to the Council of State.

Constitutional amendments. The constitution may be amended by parliament. To do this requires the passage of the measure on two occasions in both houses with at least a three months' interval between them. An absolute majority in each house is necessary. A popular referendum on the change may be forced by one-fifth of either chamber, 500,000 voting citizens or five regional councils, unless the change has been adopted by a two-thirds majority in each house on the second vote. In such a case no referendum is possible (Article 138).

The Constitutional Court. A real innovation of the new constitution was the creation of a special court to settle constitutional conflicts. It was necessary to have some such institution because, although Italy is not a federation, the constitution does give certain powers to the regions which might well occasion jurisdictional disputes between the regional governments and Rome. The Constitutional Court has the authority not only to declare regional but also central acts and laws unconstitutional. It also acts on impeachment proceedings brought against the president or ministers.

The court consists of fifteen judges. Five are appointed by the President of the Republic, five by joint session of parliament, and five by the top judiciary of both ordinary and administrative courts. All who are chosen must be from the legal profession in its judicial, professional, or practicing branches. Appointment is for twelve years with staggered retirement, and the judges may hold no legal or official post during this term (Articles 134, 135, 136, 137).

It should be observed that this court has original and exclusive jurisdiction over constitutional disputes and that it has no other jurisdiction except that relating to impeachments. The numerous legal appeals that reach the

United States Supreme Court are handled in Italy by the Court of Cassation. It should be able to settle constitutional issues quickly and without the delays occasioned by a crowded calendar and prolonged litigation in lower courts.

LOCAL GOVERNMENT

The regional system. A high degree of centralization of administration had been characteristic of Italian government almost from the beginning of the Italian monarchy. The regions were allowed no political functions since 1860 and were broken into provinces under Rome-appointed prefects. We have already noted Mussolini's further destruction of local self-government. The Republican party in particular strongly urged a revival of self government at the local level and were able to accomplish a part of their goal in the constitutional provisions for regional government. They were supported by the Christian Democrats in this matter and opposed by the Liberals, Socialists, and Communists. The latter, however, came out for regionalism following their defeat at the polls in 1948. Obviously they might hope to retain power under this system in certain areas even though not in control of the central government.

Articles 114 through 133 describe the local government areas—regions, provinces, and communes—and outline their powers. The regions, nineteen in number, are concerned with the administration of public works, transportation, local police, and other matters of regional interest. They are forbidden to interfere with interregional commerce and travel, and they may not impose customs duties of any kind.

The regional government consists of a regional council (the legislature) and an executive council or *giunta* (the executive) with a president who promulgates the regional laws and oversees the execution of administrative matters delegated to the region by the state. The regional council, elected according to state laws, appoints the executive council and its president. It also drafts a constitution for the region which must be adopted by absolute majority of the councillors and subsequently be approved by parliament. By implication (Article 123), such regional constitutions include provisions for popular initiative and referendum on regional laws.

The national control of regional laws and administration. The central government is represented in the region by a commissioner to supervise the administration of national functions and to coördinate this work with the administration of national laws entrusted to the region. There is no apparent intention in the law to have this commissioner become as powerful a figure in the region as the prefect is in the province. On the other hand, there is no such independence for the region as is enjoyed by a state of the American Union. The commissioner, at the request of the national government, may require

the regional council to re-examine one of its decisions. If the council reapproves it by an absolute majority, the national government may refer it to parliament for final action, or to the Constitutional Court if the objection rests on grounds of legal competence.

Beyond this the regional council may be dissolved by order of the national government for unconstitutional or illegal acts on the part of the council or its executive. It may also be dissolved when it cannot function or for reasons of "national security" (Article 126). The dissolution is by presidential decree after the president has consulted a special regional affairs joint committee of parliament.

Regional boundaries are not guaranteed by the constitution but may be altered at the request of communal councils representing at least one-third of the interested population followed by approval of the change by a majority vote in a referendum (Article 132).

So far, regional governments have been set up in four regions only (Sardinia, Sicily, Trentino Alto-Adige, and Valle d'Aosta) of the nineteen listed in Article 131 of the constitution. The Italian government has shown little zeal in implementing this part of the constitution despite the fact that the Christian Democrats were originally among its strongest supporters. This may well be due to the fear that some of the regional governments would fall into the hands of opposition parties and particularly the Communists.

Other local governments. The regions are divided into provinces, and the latter, in some cases, into districts (*circondari*) for administrative purposes. The smallest unit is the commune which, as in France, is often a village with some surrounding land. The details of self-government at this level are not to be found in the constitution but are left to legal regulation. It is provided that the region shall exercise supervision over the legality of provincial, communal, and other local government acts and regulations in much the same way that the national government supervises the region (Article 130). The precise role of the province in the Italian system has not yet been determined. It was equivalent to the French department and, like its prototype, was dominated by the prefect appointed by the minister of the interior in Rome. This is still the case, but there is some evidence that the prefectural institution is on the way out. Nevertheless, the prefect can still issue directives in police and financial matters to the *presidente* of the province and the *sindaco* (mayor) of every commune within it. He can also, under certain circumstances, dissolve a local council.

THE ELECTORAL SYSTEM

As noted above, the constitution is terse on the subject of the franchise.⁶

⁶ The *Manuale parlamentare* (Rome, 1948) contains the texts of the constitution and electoral laws.

It is enjoyed by men and women of twenty-one or older and by married men at the age of eighteen. Ex-Fascists who held official positions in the party are disfranchised.

Voting for the Chamber of Deputies. Voting for the Chamber of Deputies is regulated by a decree of February 5, 1948. This decree divides the country into thirty-one election districts usually corresponding with single regions or portions of a large region. Each district elects a number of deputies, with one for each 80,000 inhabitants. Each party prepares a list of candidates, nominating not more than there are seats to be filled, and chooses a symbol for the ballot.⁷

When the voter goes to the polling place on election day (always a Sunday as in France), he is given a ballot adorned with all the party symbols and containing also a space upon which he may write the names of preferred candidates. The voter first checks the symbol of his chosen party and then, if he wishes, writes in from one to four names of the party's candidates that he prefers. No names appear on the ballot, so the voter must be literate in order to take advantage of this provision.

The voting is scored by a complicated process characteristic of list systems of proportional representation. All the votes in the district are counted and the result is divided by the number of deputies to be elected plus three. The resulting quotient is divided into the number of votes obtained by each party and the result of this division gives the tentative number of candidates elected by each party. If this method produces a total number of tentative deputies greater than the number to which the district is entitled, the dividing process is done over again with a quotient consisting of the number to be elected plus two instead of three. This results in a larger division for the party votes and will reduce the representation of some lists. If the tentative electees are still too numerous, the dividing is done by reducing the quotient by one and the process is again repeated.⁸ The next step is to count the preference votes for each candidate in each list, and the candidate with the largest number of such write-in preferences heads the list. Candidates are then declared elected in descending order of such preference votes until the party's quota has been obtained. The names remaining on each list of those who failed of election are sent to Rome, and if a deputy dies or resigns before the end of his term his

⁷ This is particularly important in those districts with many illiterate voters. The symbols are in some cases traditional such as the Communist hammer and sickle and the ivy leaf of the Republicans. The Christian Democrats use a shield bearing a cross and the word *Libertas*. The National Movement for Social Democracy (neo-Fascist) used a map of Europe showing in black all the territory ever occupied by Mussolini's armies or claimed by the Fascists.

⁸ The least populous district, the Val d'Aosta, has but one deputy. It is therefore a single-member district, and something like the old French system is used. Each party nominates a single candidate and if none gets an absolute majority on the first ballot, a run-off election is held two weeks later between the two leading candidates.

place is filled by the next name on his party's list from his district. This obviates the trouble and expense of by-elections and also freezes the party strength until the next general election.

It is obvious that some parties will have failed to elect a single candidate in several districts although polling a number of votes and that others will have considerable extra unused votes above the amount needed to elect their successful candidates. All these votes are applied to a national list, drawn up by each party. Any party obtaining a single seat in any district is entitled to have a national list for its extra votes. In some districts the system of counting will produce either more deputies than the district is allowed, or fewer. In this case, fewer are elected and the unassigned seats are filled by a similar mathematical process from the national lists.⁹

Nonvoters. Although there is no precise legal penalty for nonvoting, the citizen who fails to vote without satisfactory reason has a note to this effect placed in his dossier and may find the authorities uncoöperative thereafter in the matter of issuing licenses and passports.

Electoral law of February, 1953. In order to enable a strong government to be formed despite a divided electorate, the De Gasperi government pushed through parliament an electoral law giving extra representation in the Chamber to any alliance of parties capable of winning a bare majority of the popular vote. The law was reminiscent of one sponsored by Mussolini, but this time it was bitterly opposed by the neo-Fascists because obviously only De Gasperi's Center alliance could hope to benefit by it. Its main provision is one whereby two or more political parties may announce an alliance. Their candidates run for office in the usual way, but the popular vote of all parties in the alliance is totaled and treated like the vote of a single party for seat distribution purposes. This sounds much like the French electoral law. But if the allies have received between them more than half the popular vote they are assigned 65 per cent of the seats which are distributed among the parties in accordance with their voting strength. This feature of the law recalls the Fascist electoral law of 1923. The law applies only to the Chamber of Deputies and not to the Senate.

Its results in the 1953 elections. The law was passed only by the strongest kind of pressure by the government and to the accompaniment of prolonged filibusters as well as some disorder including fist fights in both chambers. It was unpopular not only with parties of the extreme Right and Left but also with many of the Center who thought it an unscrupulous device to pervert the election results. As it happened, the law did not operate, for the parties of the

⁹ In the elections of April, 1948, twenty-three deputies were elected from the national party lists. This was almost one deputy in twenty-five.

Center, grouped around De Gasperi's Christian Democrats, lost ground with the voters and failed by nearly 60,000 votes to get the 50.01 per cent of the popular vote needed to qualify for the bonus. Accordingly the seats were distributed under the terms of the 1948 law discussed above.

Senate elections. The constitutional provisions for senatorial elections have been mentioned already.¹⁰ These have been expanded by the law of February 6, 1948. Under this law the ministry of the interior divides the regions into senatorial election districts, one for each senator. The voters, therefore, vote for a single senator. If one candidate receives 65 per cent of the vote he is elected. This happens in only a minority of cases. When it does not, all the votes from the districts that failed to elect a candidate are added together for each region, by parties. The party with the largest total gets the first seat. It is then divided by two and compared with the next largest party total. This process is continued until all seats have been assigned. It is still necessary to decide which of the various candidates on each list shall be chosen. This is done by picking those candidates who have obtained the largest percentage of votes in their districts. No national lists are used for the senate.¹¹ By preserving the lists of defeated candidates, alternate senators-elect are provided. In case a senator dies or resigns his seat he is succeeded, without by-election, by the next in line of his party's unsuccessful candidates.

Local elections. It is unnecessary to detail the local electoral system. Suffice it to say that the regions are provided with a one-chamber legislature (*assemblea regionale*) elected for a four-year term. The legislature chooses the executive. The communes have a communal council which elects its executive council (*giunta comunale*) and mayor (*sindaco*). The larger communes, which are provincial capitals or have over 30,000 population, use an elaborate list system of proportional representation. The smaller communes have a peculiar system whereby the elector votes for only four-fifths of the candidates to be elected, by name and not according to any party list. In effect, this normally assures about an 80 per cent majority for the successful bloc.

The ministry. The Italian cabinet consists of the president of the council of ministers (the prime minister) and some fifteen ministers who head the various administrative departments.¹² Most of these perform the functions one would associate naturally with their titles. The ministry of the interior is similar to that of France in its primary concern with police and internal order. It controls the national police force, the *carabinieri*, well known to tourists for

¹⁰ See above, p. 614.

¹¹ Val d'Aosta with but one senator to elect uses the ordinary Anglo-American single-member district system. A simple plurality elects.

¹² These now include the following ministries: foreign affairs, interior, justice, finance, treasury, defense, education, public works, agriculture and forests, transportation, postal and telegraph services, industry and commerce, labor and social security, foreign trade, merchant marine.

their picturesque capes, swords, and three-cornered hats. It also appoints the provincial prefect and his chief of police, the *questore*. Both of these officials are a hold-over from previous régimes and enjoy great prestige and considerable authority in the province.

The civil service. The Italian civil service has a long tradition of inefficiency and insubordination to the government of the day. It was once said that the British civil service was the "outdoor relief of the aristocracy." This was to some extent true in the eighteenth century; it ceased to be true a century later. A corresponding reform never occurred in Italy and the civil service has continued to be staffed in its higher ranks to a large extent by the younger sons of southern landowners. Influence rather than merit is the key to appointments and promotions. Salaries in general are very low and the service is heavily overstaffed. Most civil servants of the lower categories have to take part-time jobs on the outside in order to make a living. This is rendered the more feasible in that the public offices are generally open for business only about four hours a day. As a result, the morale of the service is low and the employees are not only inefficient but uncoöperative in their relations with the public. Tips are expected in order to induce the performance of their normal duties. In the higher ranks, the service is extremely conservative; it has managed to withstand various attempts at reform and has even successfully blocked government policies with which it was in disagreement. There is no such general control as is exercised in England by the Treasury and in the United States by the Civil Service Commission and the Bureau of the Budget. Something of the kind is badly needed, for probably no country in Europe is in greater need of civil service reform than is Italy.

PARTIES AND POLITICS

The reader will remember that Italy, before Mussolini, had a number of political parties and that the Fascist dictatorship suppressed them all in the process of giving itself a monopoly of power. The six parties of resistance formed the basis of the first post-Fascist governments. Two of these became the outstanding contenders for power in the period following the adoption of the new constitution. The Christian Democrats represent a combination of most of the non-Marxist elements in Italian politics. They are opposed by the powerful, well-organized Italian Communist party with voting strength far in excess of its actual membership.

The Christian Democrats. The Christian Democrats, under the skilful leadership of Premier Alcide de Gasperi, are the spiritual successors of Sturzo's Populist party. In general they represent a centrist position. Their leadership is piously Catholic. This is no disadvantage in Italy where the Papacy

came through the anti-Fascist period with undiminished prestige. Although its program is mildly reformist and it is pledged to sweeping land reform in the south, the party's supporters vary from liberals such as the Groucchi group, who urge speed with the land reforms, to southern reactionaries who have successfully slowed the reform program. The party chief, De Gasperi, is a man of long political experience who simply stood aloof from politics during the Fascist period. He has been outstandingly successful in keeping his coalition together and in reconciling differences among the members of his own party.

The Christian Democrats claim 2,000,000 members, although their voting strength has been much greater than this. They appeal strongly to the female voters, no less than 42 per cent of their support coming from Italian women. They have considerable strength among farm proprietors also. They are strongest in the south and the Venetian region and in the towns and countryside rather than the larger cities.

In the elections of 1948 and 1953 this party had the united support of the Catholic hierarchy and clergy. Most important, it enjoyed the energetic assistance of Catholic Action whose 5,000,000 members worked hard to get out every possible vote for Christian Democracy. The Vatican no longer stands aloof from Italian politics and one may assume that it will continue to be an important factor in future elections.

The Socialists. No other European socialist party has been so plagued with schisms. This has been due to the intransigent Marxism of the hard core of the party, which has led it to become a mere echo of the Communists and has gradually alienated the moderate elements. The right wing of the party broke off in 1946 and 1947 because of this Communist line and themselves split into several groups. The most important of the dissident parties is Saragat's Socialist Party of Italian Labor (PSLI). This party agreed to coöperate in the government coalition of 1947. Other anti-Communist Socialists remained in the old party for a time, hoping to change the party attitude, but broke away before the 1948 elections because they favored the Marshall Plan and would not accept the Communist-dominated Common Front. A large number of these dissidents formed the Socialist Unity party (PSU) under the leadership of Giuseppe Romita. Another leading figure in this group is Ignazio Silone, the celebrated novelist. There have been various attempts on both sides to bring the PSLI and the PSU together although the leftist elements in the PSU are not altogether happy about it. As a move in this direction the party congress of the PSLI voted on April 4, 1951, to withdraw from the De Gasperi government. Accordingly, the three Socialist ministers resigned their posts the following day. The PSLI claims about 500,000 supporters and the PSU almost as

many.¹³ Generally speaking, the Socialists of all sorts are strong only in the industrial northwest.

The Fusionist Socialists. The Fusionist Socialists are the rump of the old Socialist party, what is left after the numerous excursions mentioned above. It has remained under the leadership of Pietro Nenni. This man was a Fascist for a few months in 1919, at the very start of the movement. His ideas and methods indicate a certain sympathy with those of Mussolini. He has, in fact, imitated dictatorial methods by eliminating rank-and-file democracy within his party. At his request, the party's central committee has ruled that no resolutions may be introduced at party congresses except those of the party executive. His policy is to march in lock-step with the Communists and follow every dictate of the Cominform. At first glance there would seem to be no reason why Nenni and his adherents should not simply join the Communist party. Actually the Socialist party is more useful as an ostensibly independent group because it continues to keep in its ranks many who could not bring themselves to actual Communist membership. The Nenni Socialists were very strong in 1946. They polled 4,744,000 votes and elected 112 deputies, a larger contingent than the Communist. The numerous defections following that election reduced their strength to the point where they were able to elect only sixty deputies in 1948. They still claim a party membership of about 1,000,000.¹⁴

The Communists. The *partito comunista italiano* is the strongest such party outside of the Iron Curtain. There are several reasons for this. Widespread poverty, dissatisfaction with the government, repression under the Fascists, all have led many Italians to turn to the extreme Left in politics. Further, the Italian Communists, forced underground by Mussolini, were never able to display that curious tolerance of Nazism seen in other countries during the Hitler-Stalin pact. They have a consistent record of opposition to dictatorship and a magnificent record of resistance to Mussolini's Fascist Republic. Their leadership is experienced and able. In Palmiro Togliatti they have one of the cleverest of Italian politicians, a leading figure in the Cominform and a Communist who seems to enjoy the complete confidence of the Kremlin. Other leaders of importance include Luigi Longo; Pietro Secchia, the secretary-general of the party; and Giuseppe Di Vittorio, a labor leader who is national secretary of the CGIL (General Confederation of Italian Labor).

The party organization is of the same disciplined, undemocratic variety as

¹³ Combined election lists make it very difficult to assess the precise voting strength of a party. In many districts the PSII and PSU have presented joint lists in elections.

¹⁴ Like the other extremist parties they recovered ground in the 1953 elections, and although this time they ran alone and not on a joint ticket with the Communists as they had done in 1948, they polled 3,440,222 votes and elected seventy-five deputies.

in other Communist parties. The party claims 2,500,000 members. Its strength is chiefly in central Italy and the industrial north. It is weakest in the conservative Veneto and the south. So far at least, the southern Italian peasants, who would seem to be obvious objectives of Communist propaganda, have not succumbed to Communist lures. Should they fail to receive satisfaction in their hunger for land they might well enter the Red camp.

The Communist tactics in Italy have been of the Popular Front variety dictated by the Cominform after the war. In their search for allies they have received some support from various independents but chiefly from the old core of the Socialist party under its doctrinaire Marxist leader, Pietro Nenni. The recent defection of two Communist deputies, Aldo Cucchi and Valdo Maguani, encouraged some observers to hope for a "Titoist" movement within the party. So far, there is no evidence of this. The first party convention in three years was held on April 3, 1951. At its meetings there was no indication that the old leadership was losing its grip, and the hall was still dominated by gigantic portraits of Stalin and Togliatti.

Smaller parties. The Liberal party (*partito liberale italiano*) is the ancient party of Cavour, and the heir of the *risorgimento*. It has dwindled in importance since the days of its glory and its supporters have tended to desert it for other parties, chiefly those of the Left. It is essentially a conservative party today although it can still boast a few great names. For the most part its voters are found in Piedmont, its original home, and in the south.

The Republican party (*partito repubblicano italiano*) is the heir of the traditions of 1848, and the republican ideals of Mazzini and Garibaldi. Except during the short-lived revolutionary triumph of 1848, it never participated in any Italian government until 1946. It is as strongly anticlerical as it is republican and its economics are those of rugged individualism. In many ways it is similar to the French Radical Socialist party of the nineteenth century. This is particularly true of the Mazzini wing of the party led by Senator Giovanni Conti. There is now, however, a section led by Ugo La Malfa which has a welfare-state approach to political economy and even one under Randolfo Pacciardi which seems to be moving toward right-wing socialism.

The parties of the Right did badly in the 1948 elections. Much of their voting strength was absorbed by the Christian Democrats.¹⁵ But in 1953 the Right made remarkable gains, almost tripling their vote as compared with 1948. While the extreme Left boasted a gain of thirty-five seats in the Chamber, the Right gained forty-nine. The Monarchists won twenty-six new seats for a total of forty. More disquieting was the success of the frankly Fascist *movimento sociale italiano* (MSI). This party elected six deputies and one senator in 1948, but in 1953 it seated twenty-nine deputies and nine senators.

¹⁵ As in France by the MRP in 1946.

The remaining parties (there are some thirty altogether) are of no real significance. Several are purely regional and others are of the freakish sort typified by the "beefsteak" party that campaigned in the Florence area with the slogan: "A beefsteak for every citizen."

ITALIAN PROBLEMS

Italy is a beautiful but poor country. It has an insufficiency of both arable land and natural resources. It is overpopulated and the old solution of constant emigration is not possible today. Contrary to common opinion, the Italian birth rate is not high, although it varies widely between north and south. In the poverty-stricken south the average family contains seven persons and in the north only four. Italy is, in a sense, two countries. The relatively prosperous north is culturally and industrially part of western Europe. The south with its great estates and illiterate peasantry is a Mediterranean land.

Italy suffered severely in the war. Despite the vital aid supplied by ECA, 2,000,000 persons (10 per cent of Italian labor) are unemployed. This represents a doubling in unemployment since Fascism. Productivity remains low, below postwar levels, and the factories are overstaffed and relatively inefficient. This situation exists for several reasons. Much of Italian industry is government-owned, but not because of socialism. Even before Mussolini came to power the government had been induced to step in and finance industries that otherwise would have failed. This tendency continued under Fascism, and Mussolini favored the expansion of industry, some of which was hardly justified economically, as a part of his imperialist dream. The government remained a mere stockholder, however, and private management still controls the plants. But this management has become accustomed to rely upon government subsidies and political influence in the administration rather than energy and enterprise. In effect the government subsidizes many submarginal plants at the expense of the taxpayer. The great mechanized industries of the northwest rely almost entirely upon imported raw materials. This requires foreign credits, and they are hard to obtain because the overpriced Italian manufactures have a difficult time competing in world markets.¹⁶ The overstaffing of the factories is one reason for the high price of Italian products, but the unions will allow no reduction in force. It remains to be seen whether their participation in management councils will improve or worsen this situation.

Italy's per capita income is extremely low. Indeed, it is not only lower than it was in 1938 but even 10 per cent below the level of 1913.¹⁷ According to

¹⁶ Dollars are especially scarce and without ECA allocations Italy's situation would have been desperate. Thirty-five per cent of Italy's imports come from the United States and only 6 per cent of her exports go there. The Bank of Italy advanced \$270,000,000 in 1948 to finance exports to western Europe and Latin America. This export business therefore is financed by the Italian taxpayer.

¹⁷ According to the Association of Italian Joint Stock Companies.

the United Nations, the 1949 average individual income in Italy was only \$235 per year as compared with \$482 in France, \$773 in Great Britain, and \$1,453 in the United States. In part this is due to the inefficiency of Italian agriculture. The need is for machines, education, and technological training. a substantial improvement in these respects could raise food production considerably, improve the terribly low living standards in the south, and provide a better domestic market for Italian industry. Many Italians are well aware of these needs, but conservative influence in the government has been strong enough to prevent a forthright attack upon the problem. In the meantime the peasantry, essentially conservative, has shown a new spirit of independence in the seizure of parts of large southern estates without waiting for the long-deferred land redistribution.

Few studies in English are available as yet on the new Italian constitution and its practice. For background the student may refer to Muriel Grindrod, *The New Italy* (Royal Institute of International Affairs, London, 1947). A useful article by Mario Einaudi is "The Constitution of the Italian Republic," in *Amer. Pol. Sci. Rev.*, XLII, 661-676 (1948). See also H. Crosa, Editor, *La Costituzione Stalienne de 1948* (Paris, 1950). See also J. C. Adams and Paolo Barile, "The Implementation of the Italian Constitution," in *The American Political Science Review*, Vol. XLVI (March, 1953). For a discussion of the Republican Constitution in Italian, M. Ruini et al., *La Nuova Costituzione italiana* (Rome, 1947).

The text of the constitution in English translation may be found in Adams, Kerr, Park, and Pratt, *Foreign Governments and their Backgrounds* (New York, 1950), pp. 577-607; abridged versions are in Laing, Vernon, Eldersveld, Meisel, and Pollock, *Source Book in European Governments* (New York, 1950), pp. 157-196, and in Hill, Stoke, and Schneider, *The Background of European Governments* (New York, 1950) pp. 544-559. The latter book also has a commentary on the constitution, pp. 560-568. See also R. Pryce, "The New Italian Electoral Law," in *Parliamentary Affairs* (Summer, 1953); T. Cole, "Reform of the Italian Bureaucracy," *Public Administration Review* (Autumn, 1953).

The Italian political parties are discussed in the following articles: Gabriel Almond, "The Christian Parties of Western Europe," *World Politics* I, 30-58 (1948); Max Ascoli, "Communism in Italy," *Commonweal*, XLVII, 32-35 (1949); Mario Einaudi, "Christian Democracy in Italy," *Review of Politics*, IX, 16-33 (1947); "The Italian Elections of 1948," *Review of Politics*, X, 346-361 (1948). The Christian Democratic party is discussed in Part I, pp. 1-108, of M. Einaudi and F. Goguel, *Christian Democracy in Italy and France* (Notre Dame, Indiana, 1952). See also M. Rossi, "Neo-Fascism in Italy," in *Virginia Quarterly Review* (Autumn, 1953). Attention should also be called to Mario Einaudi et al., *Communism in Western Europe* (Ithaca, 1951).

Russia

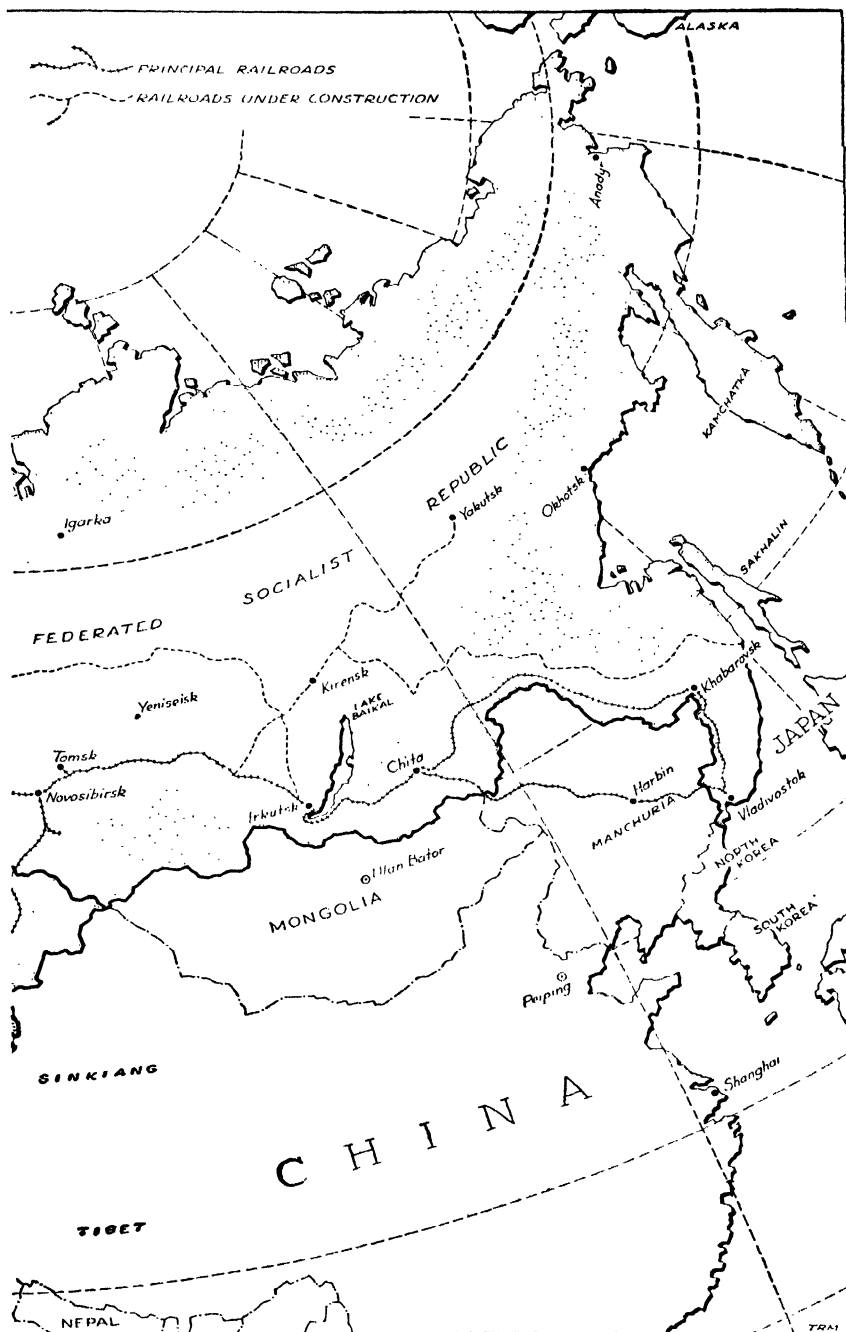
CHAPTER XXXVIII

Soviet Russia: The Background

Nothing in Russia is ever done by cold design, unless it be by Jews and Germans. The whole of Russian history is a story of accidents.—Stephen Graham

Geography and people. The vast territory of the Union of Soviet Socialist Republics comprises what has been called the “heartland” of the world, the central land mass of which Western Europe, India, and China are mere peninsulas. It is predominantly open country, the mountainous regions being found mainly at or near its borders. The Urals, which lie between European and Asiatic Russia, are not high or difficult to pass. The characteristic feature of Russian geography is the vast plain stretching with minor interruptions for thousands of miles from Germany to the Sea of Japan and from the frontier of Iran to the frozen Arctic. The characteristic inhabitant of this land is the peasant. There have long been cities, it is true, and in the east, nomadic herds-men. But the peasantry has always comprised the great bulk of the population. These two factors, the great plain and the peasantry, have affected Russian history profoundly. The plain, traversed by great rivers, afforded easy expansion for the Russian people wherever they met with no serious political and military resistance. At the same time it made Russia easy to attack. The almost constant series of invasions with which the Russians have had to cope has affected their attitude toward the outside world. Not a belligerent folk, they tended to withdraw before the enemy and let the vast distances of the Russian plain diminish the invader’s driving force. As a peasant people they have been patient and hard-working, fanatically attached to the land, easy to bully most of the time but difficult to drive when thoroughly aroused.

Climate. The climate is continental, which means that it is subject to great extremes of heat and cold. It varies all the way from that of the arctic tundra, with its permanently frozen subsoil, to the semitropical Black Sea country. But more than three-quarters of the entire USSR belongs in the tem-



Drawn by Theodore R. Miller

of the Union Republics

perate zone, with the long, cold winters and short, hot summers of such latitudes when far removed from the moderating effect of the oceans. There is insufficient rainfall in all but a few favored spots, and water has always been a problem in Russian agriculture as it has in our own West.

Resources. The Soviet Union is rich in natural resources including nearly all the minerals as well as the basic industrial necessities of iron, coal, and oil. These resources have been exploited only recently and their precise extent is not fully known. The low rainfall in the south and the short growing season farther north have meant that European Russia has never been blessed with much surplus food. The areas where normally such a surplus is grown have also suffered at times from famine. Large-scale irrigation projects are a part of all the state plans for agriculture. The vast Russian forests, despite the inroads that have been made in recent years, still contain the largest quantity of standing timber in the world.

History. The Slavs appear in the dawn of recorded history as a pacific people in the hinterland of the Roman Empire. Their first civilization developed around the commercial river cities such as Great Novgorod and Kiev. Kiev, indeed, became the link with the Eastern Roman Empire and absorbed some of the Byzantine civilization, including Christianity. Always, however, the Russians were a ready prey to more warlike invaders. In the early Middle Ages they were overwhelmed by the Mongols who devastated their cities and made them subjects of the Great Khan. After the original slaughter was over, the Mongol yoke was not heavy. As conquerors, the Mongols could not think beyond the exaction of tribute, and the Russians were allowed to keep and develop their own institutions, although they were influenced by the Oriental ways of their overlords. Indeed, as chief tax-collector for the Mongols, the Prince of Moscow was able to increase his own power and importance at the expense of his neighbors. Mongol adventures in China and elsewhere as well as political incapacity led to the gradual disappearance of Mongol power in the West until the only reminder of their empire was the Mongol-Tartar tribes on the shores of the Black Sea along the Volga, and in the Urals.¹ The Princes of Moscow continued to expand their dominions until when Ivan the Great married a Paleologue princess he claimed to have inherited the imperial mantle of Byzantine—for Constantinople, the Rome of the East, was now under the Turkish heel. By the end of the sixteenth century Moscow had become Russia and its princes tsars. Their dominions included the Ukraine and the Volga Valley and stretched as far as the Caspian Sea and Siberia.

But the easy expansion of Muscovite power was soon to end. The seventeenth century was one of wars and invasions from the West. The Poles and

¹ The Crimean Tartars have now been "liquidated" as disloyal to the present regime.

the Swedes invaded Russia, but the Russians broke the invaders, chiefly by the use of endless distances and manpower.

Peter the Great (1689-1725). Russian isolation is no new phenomenon. Having chosen the Byzantine form of Christianity, the tsars excluded Roman Catholics since about the beginning of the sixteenth century. The fellow Slavs of Poland who were Roman Catholic and should have been the transmission belt for the civilization of Western Europe were therefore regarded as permanent enemies. Russia remained essentially a vast plain dotted with villages of hard-working, illiterate peasants quite cut off from Europe and unchanging in their way of life from one generation to the next. Nevertheless the tsars were determined that Russia should become a great power. Peter the Great saw what was needed to accomplish this result and set out with incredible energy to re-make his kingdom into an empire. Primarily he wanted a strong army to defend his borders which provided no natural defenses. To get such an army he had to place everyone under discipline, make serfs of the peasants and officers of the gentry. He inherited a kingdom of Orthodox Great Russians. He left an empire with a new capital in the marshes of Finland, and Balts as well as Russians for its subjects. He set the pace for his successors who were to expand the empire until the Great Russians would compose only about half their people and the Orthodox Catholics a bare majority. Peter's ambitions could not be realized in a single life-time. His "window open upon Europe," as Pushkin called it, did acquaint some of the upper classes with Western civilization, but the masses remained the semi-Orientalized people who had been subjects of the Mongol Khans. Peter greatly increased the power of the autocracy by subjugating the Orthodox Church and making it his creature. He introduced German technicians and tried to begin the industrialization he knew to be necessary to a modern state. He left a Russia permanently oriented toward empire and with a stronger and better administered autocracy. But all this rested upon a peasant people who cared nothing for reforms or empire and who found their burden a heavy one.

Catherine the Great (1762-1796). Peter's ideas of empire were never abandoned by his successors, although his admiration of Western civilization gave way in the nineteenth century to a reactionary and obscurantist pan-Slavism. Catherine the Great carried on Peter's dream of a civilized and Westernized Russia and expanded her dominions by sharing in the partition of Poland. Under Catherine, Russia reached the ice-free waters of the Black Sea and so realized an ancient Russian ambition.

The Crimean War. The next important Russian adventure beyond its borders resulted in the Crimean War. The Tsar Nicholas I, motivated by a desire to protect the Orthodox Christian subjects of the Turkish Sultan and to

gain control of the Bosphorus, went to war with Turkey in 1853. England and France, for various reasons, came to the defense of the Turks. The war was inconclusive, but the Russians finally lost their forts at Sevastopol on the Black Sea and Russian penetration into Turkey was checked for a time by the treaty of Paris (1856) which forbade all warships in the Black Sea and removed any Russian threat to the Eastern Mediterranean.

In typical fashion, forestalled at one point, the tsars turned their attention to an easier conquest. One by one the tribes of central Asia were brought under tsarist rule. The latter third of the nineteenth century saw Russian flags flying at the borders of Persia, Afghanistan, and China. The British, fearful for their empire in India, countered by securing domination of Afghanistan, and then both powers began to try to control Persia. Only the new threat from Germany with its proposed Berlin-to-Bagdad railway drew the old rivals together into an agreement which divided Persia into carefully drawn "spheres of influence."

The Russo-Turkish War. Once again the tsar turned toward the West. Outraged by continued suppression of his Christian subjects by the Sultan and appearing as champion of the southern Slavs, the tsar declared war on Turkey in April, 1877. The Turks were without allies this time and were defeated. Serbia, Montenegro, and Roumania gained their independence from Turkish suzerainty. The tsar had planned to have a huge Bulgaria, under Russian hegemony, reaching from the Black Sea to the Aegean. This was contrary to the interests of Austria and Britain, who combined with Prussian help to force the tsar to agree to a Bulgaria that stopped at the Balkans, leaving the Turks in possession to the south. This was formally accepted at the Congress of Berlin, July, 1878. From the Russian viewpoint, a successful war had ended in a diplomatic defeat.

The installation of serfdom. Internally, the nineteenth century was one of ferment in Russia. At the end of the seventeenth century the tsars had introduced the system of serfdom to bind the peasants to the land. At this time the landlords were actually rendering military service and the peasants tended to accept their serfdom as a natural part of a feudal system. The land, they felt, was still theirs, even though they themselves belonged to the lord. When, in time, the nobility became a class of mere rent-receivers, the peasant could find no justice in the situation. The landlord was regarded as a parasite without rights in the land, even though the law said it was his. Many landlords were cruel to their peasants and few were interested in agriculture or the improvement of the land. All this explains the series of peasant insurrections, the burning of squires' houses, and the like which occurred from time to time during the nineteenth century.

Emancipation of the serfs (1861). The "Tsar Emancipator" Alexan-

der II realized that serfdom was no longer a viable system and would have to go. In 1861 he issued the Edict of Emancipation which not only freed the serfs but arranged that they should have land holdings roughly equal to the average peasant farm in the various regions. But the land had belonged legally to the landlords, and the newly freed peasants were saddled with redemption dues. These were a heavy burden for many of these illiterate farmers not accustomed to money debts, whose backward farming methods could hardly enable them to rise above the subsistence level. Furthermore they had regarded their former services to the landlord as unjust and they now regarded the redemption payments as equally unjust. They felt that the tsar had somehow been fooled by the gentry who were preventing him from doing the good he had intended.

The results of emancipation. On the average, peasant holdings were smaller after emancipation than before, and the home farm kept by the former landlord often consisted of the pasture lands which left the peasantry without this important part of a balanced mixed farm. Usually the peasant still had to work for wages on the squire's farm because he could not exist otherwise. Altogether his position, social and economic, was hardly improved by emancipation, even though he was no longer tied legally to the land. The only way to avoid the compensation payments was to accept a "pauper" lot, one-fourth of the normal area, and hundreds of thousands did so. The peasant was in no position to assert his rights against authority and he remained obedient to the command of every petty official who was ready with fist or whip to punish any sign of disobedience. In fact, emancipation was annoying to the landlords, ruinous to some, and a bitter disappointment to the peasantry. The total effect may well have been to shake the foundation of a regime that was already unsteady.

It is conceivable that the reforms of Alexander II, which included a system of local self-government² as well as judicial reforms, did nothing to stave off disaster but rather encouraged the growth of a liberal movement basically opposed to the tsarist despotism. As Alexis de Tocqueville observed, it is dangerous for a bad government to begin to reform itself. One effect of emancipation was to swell the peasant exodus to the cities where there were factory jobs to be obtained at the low wages and under the brutal working conditions of the early Industrial Revolution. These factory workers were later to be the mainstay of the Bolsheviks in their ascent to power.

²In each province, a council was established, its membership elected by smaller district councils that were directly elected by an electorate with a restricted franchise. These councils set the local tax rate and had authority over roads, schools, poor relief, and other matters of local concern. Similar municipal councils were set up in the cities. See Paul Vinogradoff, *Self-Government in Russia* (London, 1915).

Alexander II balked at one reform, the one most desired by the intelligentsia and those of the gentry who had become infected with Western ideas: a representative parliament. An enlightened despot, Alexander would consent to no modification of his despotism in its essentials.³ The latter part of his reign was marked by an upsurge of nihilism with its basis in philosophical anarchism and its tactics of riot and assassination. The tsar's secret police sent scores of thousands to Siberia but they could not destroy the movement and the tsar himself fell before a nihilist bomb in 1881.

Alexander III who then succeeded as tsar embarked upon a career of rigid absolutism. The reforms of his father could not all be abolished but further reforms could be refused. In particular the new tsar attempted the forcible Russification of his vast empire, half of which was Russian neither in ancestry nor language. The semiofficial encouragement of pogroms was a feature of his reign. All liberal movements were attacked as soon as the secret police learned of them. But they flourished nevertheless, and frustrations and resentments began to build up ready for the moment when they could burst forth and smash the regime.

The abortive revolution of 1905 and the Russo-Japanese War. This chance seemed to have arrived in 1905. Nicholas II had succeeded his father, Alexander III, in 1894. For all his reactionary policies, Alexander had kept out of military adventures, but his son seemingly could not refrain from the excitement of bullying his neighbors. He almost launched the First World War in 1896 by threatening to land his troops at Constantinople. In 1904, secure in his belief that the Japanese could be pushed out of East Asia without a fight, he spurned the advice of his ministers and rejected Japanese attempts at an understanding. The Japanese instantly cut Russian communications with Korea, took Port Arthur, and destroyed the Russian Baltic fleet which had been sent all the way to the Far East. The tsar made peace immediately, losing all rights in Southern Manchuria and Korea, and ceding half of the large island of Sakhalin. Russian prestige was greatly damaged abroad, and at home the stability of the tsarist government was further undermined.

Before the end of the war, in January, 1905, a peaceful demonstration of workers at the Winter Palace had been fired upon by troops under the command of a grand duke. This caused universal indignation and some historians believe that henceforward even the peasantry began to doubt the benevolence of the tsar. All sorts and conditions of Russians began to agitate for a constitution, peasant revolts were widespread, and the crew of the battleship *Potemkin* mutinied. When peace had been concluded the disorders continued.

³ The imperial authorities were so fearful of liberal ideas that they went to the ridiculous extreme of censoring the words "constitution" and "parliament" in the newspapers. See Sergius A. Korff, *Autocracy and Revolution in Russia* (New York, 1923), pp. 7, 8.

A soviet of workers' delegates was set up in St. Petersburg and similar soviets⁴ in other towns and cities were formed. A general strike was called under the direction of the St. Petersburg soviet, whose chairman was Leon Trotsky. This was a serious inconvenience to the government, but their real fear was of a general peasant uprising. Already the peasants had burned and looted 2,000 estates.

The 1905 Manifesto. In these circumstances the tsar issued his manifesto of October 30, 1905. Broadly speaking this document failed to provide for responsible government but did promise representative government on a broader basis than hitherto. The tsar's absolute veto over all laws was preserved and the ministers remained responsible to him alone. However, a national parliament of two chambers was established. The upper house, or Council of the Empire, was to consist of members over forty years of age with academic degrees, half of whom would be appointed by the tsar and half elected by the provincial assemblies, the nobility, landowners, chambers of commerce and industry, the church, and the universities. The lower house or Duma was to be elected through the district assemblies, henceforward to be elected by manhood suffrage. The Duma might not discuss the form of government or military or foreign affairs, but its assent would be necessary for the enactment of general laws. Russia in 1905 had at last reached the stage in political development attained by England in 1215 with Magna Carta. But the constitution of 1905 was not to be a starting point for orderly democratic development. The autocracy was determined not to budge another inch and the liberals were insistent upon immediate responsible government.

The first Duma. The premier, Count Witte, was an able conservative determined upon keeping the essentials of control in the hands of the autocracy but at the same time permitting genuine representative government. He had been responsible for broadening the franchise for elections to the district councils. The Socialist parties refused to participate in the Duma elections but all the other parties did so, the largest delegation being won by the Constitutional Democrats (Kadets) who wanted to secure the Western type of responsible government. The Duma began at once to discuss existing evils, and the tsar became uneasy. It went much too far when it tried to pass a vote of censure on the ministry because the ministers turned down the Duma's plan to expropriate land for the peasants. The tsar at once dissolved the Duma and dismissed the premier. The Labor and Kadet members took refuge in Finland which was outside Russian police jurisdiction and sought to arouse the country. They failed, for there was no mass support for popular government. Their parties had no roots in the electorate.

⁴The word "soviet" means simply "council."

In the meantime the new premier, Peter Stolypin, undertook to suppress disorder by setting up field courts-martial with summary jurisdiction. Robbers and looters when caught were hanged at once by these courts, which became known as "Stolypin's neckties." On the positive side Stolypin's program called for a drastic solution of the peasant problem by abolishing the old village collective, the *Mir*, and creating a new class of independent peasant proprietors from among the "strong and sober." This reform was never carried out completely for it met with strong opposition among the peasants, and Stolypin himself was murdered in 1911.

The second, third, and fourth Dumas. The second Duma met in March, 1907. It contained a number of Socialists of various parties who had now decided to enter the election contests. The moderates who had gone to Finland were not present and the Duma was soon dissolved, many of its members being sent into exile. The electoral law was promptly changed so that the third Duma was dominated by Conservatives, as was the fourth. Quite unrepresentative of the Russian people, these Dumas nevertheless did some necessary and effective work in connection with the land problem, education, and so forth.

It might have seemed that, despite everything, matters were gradually improving. Certainly, industrial production was rising, foreign capital was flowing into Russia, and there was more wealth even though its benefits hardly percolated to the poor peasants and industrial workers. Labor unrest was serious on the eve of the First World War. Even the conservative Duma was showing signs of opposition to the government because of the continued use of martial law. The middle classes were almost uniformly opposed to the autocracy as it existed and a revolutionary spirit was in the air. It has been suggested that the tsar and his circle were the readier to go to war in 1914 as a means of avoiding a possible revolution.

At all events, Russia entered the First World War, a polyglot Eurasian empire⁵ under a tsar who was legally an absolute autocrat and head of the official church. Only a tsar of statesman-like qualities could have carried this burden. But Nicholas II, frequently influenced by his wife who trusted her instincts rather than her reason which she admitted was weak,⁶ had a genius for self-destruction. One by one, the Conservative leaders like Witte and Stolypin, who might have saved the dynasty, had been discarded, and only the stupid, corrupt, and sycophantic allowed to govern. The war began and continued with military disasters and serious food scarcities at home. Profiteering and black

⁵ About half were Great Russians. The rest included Little Russians (Ukrainians), White Russians, Poles, Finns, Letts, Tartars, Armenians, Georgians, Jews, Uzbeks, Mongols and so forth to a total of 185 nationalities speaking 147 different languages.

⁶ In one of her numerous letters to the tsar, the tsaritsa wrote as follows: ". . . Oh, Lovey, you can trust me. I may not be clever enough—but I have a strong feeling, and that helps more than the brain often."

markets flourished unchecked. The inefficiency and corruption in the military and civilian supply arrangements were almost unbelievable.⁷ By 1917 there was no question whatever as to the fate of the tsarist régime. The only question was as to who should be its heir.

The old régime in its general aspects is well covered in Sir D. M. Wallace, *Russia* (London, 1912). Good short general political histories are Sir Bernard Pares, *A History of Russia* (Revised Edition, New York, 1953), and George Vernadsky, *A History of Russia* (New Haven, 1945). Attention should be called to a recent work on Pre-Bolshevik Russia by Michael T. Florinsky, *Russia: A History and an Interpretation* (New York, 1953). The Russian land and peasant problem is treated in Geroid T. Robinson, *Rural Russia under the Old Régime* (London, 1932), and Sir John Maynard, *The Russian Peasant and Other Studies* (London, 1942), or the abridgement of this book together with the same author's *Russia in Flux*, published as *Russia in Flux* (New York, 1948). The economic history of the late tsarist period is treated in Margaret S. Miller, *The Economic Development of Russia, 1905-1914* (London, 1926).

The nationalities of the Soviet Union and the problems they create are discussed in Walter Kolarz, *Russia and her Colonies* (New York, 1952); and by the same author, *The Peoples of the Soviet Far East* (New York, 1954). See also Waldemar Gurian, Editor, *Soviet Imperialism: Its Origin and Tactics* (Notre Dame, Ind., 1953).

Russian politics immediately preceding the revolution are covered from various points of view in A. Badayev, *The Bolsheviks in the Tsarist Duma* (New York, 1929); M. T. Florinsky, *The End of the Russian Empire* (New Haven, 1931); Count V. N. Kokovtsov, *Out of My Past* (Stanford, 1935); Sir Bernard Pares, *The Fall of the Russian Monarchy* (New York, 1939); H. Bruce Lockhart, *British Agent* (New York, 1933); O. H. Gankin and H. H. Fisher, *The Bolsheviks and the World War* (Stanford, 1940); and Alexander Kerensky, *The Crucifixion of Liberty* (New York, 1934).

A very readable recent textbook which covers Russian history from the beginning to the present with detailed attention to postwar developments is Anatole G. Mazour, *Russia, Past and Present* (New York, 1951).

⁷ See H. Bruce Lockhart, *British Agent* (New York, 1933), and Negley Farson, *Way of a Transgressor* (1936).

CHAPTER XXXIX

Soviet Russia: Marxism and the Revolution

However strange it may appear at first sight, yet it is actually Marxism . . . which has supplied us with an idealist, and, later on, a religious, current of thought.—N. A. Berdyaev

Karl Marx (1818-1883). Habitues of the British Museum reading room a century ago were familiar with the sight of a shabby, heavily bearded man who read and wrote all day and every day in that austere and lofty chamber. The figure was Karl Marx and the work upon which he was engaged was to be *Das Kapital*, his *magnum opus*. Marx, although still unknown to the general public, was already a marked man on the Continent. By the date of his establishment in London, 1849, he had been involved in the revolutionary movements of the previous year and had been expelled from both his native Prussia and France. Born in Germany in 1818, he had from the first been a brilliant student whose unconventional views, expressed in print, soon brought him into conflict with the authorities. Marx was the descendant of a long line of rabbinical forebears, but his father, a lawyer, had accepted baptism and Marx himself was entirely irreligious. Nevertheless some commentators have attributed the apocalyptic character of his writings to his ancestry. It is perhaps more accurate to say that Marx's "scientific" socialism represented a very adequate emotional substitute for his lost religion.

In 1847 he had written the *Communist Manifesto* in collaboration with his friend and patron Engels.¹ This famous document summarizes Marx's interpretation of history and his proposed solutions, but it did not and could not provide the tightly reasoned and voluminous exposition of his philosophy which he supplied subsequently in his *Capital*.²

Marxism. It is difficult in small space to summarize adequately the philos-

¹ An abridgement is given in Hill, Stoke, and Schneider, *The Background of European Governments* (New York, 1950), pp. 308-311.

² Volume I was published in German in 1867 and in English translation in 1886. The second volume appeared in 1885 and the third in 1894.

ophy, political and economic, of this revolutionary thinker. Although a socialist, he repudiated with scorn the communist ideas of his predecessors whom he stigmatised as "utopian."³ He claimed that he was the first to present a completely scientific socialism based upon a sound philosophy and a correct interpretation of history and society.

Dialectical materialism. Marx began by using a concept created by the idealist philosopher, Hegel. Every proposition, if we examine it closely, can be seen to imply its opposite, as light implies darkness. Any proposition, therefore, taken as a *thesis* implies the existence of its contradictory *antithesis*. When these are taken together they produce a *synthesis*. The synthesis, however, then becomes a thesis, and a new antithesis appears to result in a new synthesis—and so on in endless progression. This process is called the "dialectic." It can be applied not only in philosophical speculation but in observed history. For example, the feudal system (a society based upon land tenure and military service) was the mediaeval thesis. Its antithesis was the commercial society of the towns based upon trade and free contract. The resulting synthesis was capitalism. Capitalism then became the thesis and developed its own antithesis in the vast army of propertyless wage-slaves it created. The obvious synthesis destined to arise from this combination is socialism. What will emerge beyond socialism is left for the future to determine.

Historical materialism. Historical materialism is the application of the dialectic method to history and economics. All history can be explained in terms of productive forces (technology) and productive relations (ownership and distribution). This economic foundation is the basis of every society. All noneconomic phenomena—art, law, religion, and so forth—are mere derivatives of the economy. What seem to be purely religious movements such as the Crusades, the Reformation, and the religious wars of the Moslems are actually part of the economic "superstructure." An important creation of the economics of a society is its class pattern. Although there may appear to be many classes, basically there are always two: those who own and control the means of production and those who do not (slaves or wage-workers). As explained above, the changing technology has led to a series of syntheses and the final one, to date, is socialism, just in process of becoming realized in the nineteenth century.

The theory of "surplus value." Marx examined economics with special care and attempted an analysis of the productive process in a capitalist system. All goods, he said, have economic value to the amount of the labor that goes into them. The capitalist would make no profit if he gave to the worker the

³ He was scornful especially of his contemporaries, Louis Blanc and Proudhon, who were, one might say, his competitors in revolutionary ideas.

full amount of value the latter has added to the product. The worker receives, therefore, only as much in wages as the capitalist is forced to give and this is usually a subsistence wage because the worker is always compelled to work in order to eat. The capitalists' profit is "surplus value" and in effect is expropriated from the worker who has created it. No capitalist can do otherwise because competition compels all to exploit their workers or be driven out of business. In time, the more successful capitalists drive out the weaker ones and tend to become monopolists and to restrict production. Because their interests are in permanent and insoluble conflict, a class war develops between the owning class and the "proletariat," the latter being defined as the class compelled to exist on subsistence wages. Because the inevitable development of capitalism requires the increasing degradation of the proletariat the time is sure to come when the proletariat will revolt. Because of their numerical superiority and their necessity to the economy, they will win, establish a dictatorship, "expropriate the expropriators," and usher in a classless, stateless society in which the productive forces will be liberated for the benefit of all. The end result will be communism in which will be realized the ideal: "From each according to his ability; to each according to his need."

Marx's political theory. The state is part of the "superstructure" derived from the basic economy. It is therefore inevitably and solely the instrument of class domination. This is true even in "bourgeois democracies" where the appearance is one of popular self-government but the reality is still class domination. Because of this exclusive function the state will slowly disappear, "wither away," when the revolution has set up a classless society. Of course a bourgeois democracy may, in the meantime, be useful to the proletariat because of its reformist programs in education, widened suffrage, recognition of trades union rights, and so forth.

Criticism of Marxism. Marxists are prone to elevate the dialectic as the supreme mental tool in social thought. They deprecate the use of formal logic because it is static whereas the dialectic is always dynamic. In truth, the great advantage of the dialectic is that it can explain anything. The skilled dialectician can prove that everything, from Lenin's reintroduction of capitalism in his New Economic Policy to the great "Russian invention" of wireless telegraphy, is a part of the dialectical process. Actually, used in this way, it becomes a meaningless kind of verbal game. Nevertheless the Marxist dialectic is held to be the only scientific method of inquiry.

It is hardly necessary to point out that Marx's history, economics, and political science are violent oversimplifications. All contain glimpses of truth and, at times, brilliant insight, but all suffer from the attempt to make a complete, closed system out of a part of the truth. No historian today would deny the

fundamental importance of economic phenomena in history. None except the most narrow Marxists would still hold that the "superstructure" of law, religion, and the like can have no effect upon economics or are entirely economic derivatives. No political scientist would agree that the state is only and exclusively an instrument of exploitation of the dominating class. This is not true, even in the most extreme despotisms. Marx's economics appears weakest in his discussion of "surplus value" and in his assumption that developed capitalism would lead to increasing mass misery. If profits were derived solely from human labor it would follow that the entrepreneur who used less machinery and employed more workmen than his competitor would make larger profits. Marx was bothered by the obvious fact that this is not the case and made an unsuccessful attempt to answer the problem in his third volume. His "value" is actually a high-order abstraction having nothing to do with value in either the economist's or layman's sense of the word. His term "the class struggle" is an emotional description of something that has scarcely any existence outside of his writings. The term distorts and exaggerates the bargaining situation always existing between employer and labor and implies a hopeless inability to make fair arrangements, which is certainly untrue of a developed capitalism with strong trades unions. The self-conscious "proletarian" who thinks in terms of the "class struggle" is almost always a product, not of his own economic history, but of the writings of Karl Marx. Indeed the theory of the class struggle and the inevitable victory of the proletariat was and is simply a political myth of great value to Marxist agitators.

Marx's pretension to the coldly scientific approach does not deceive the analytical reader. Marx, too, is "utopian," foreseeing the march of history as leading to the inevitable goal of a socialist utopia in which each gives of his best efforts and receives a share of everything "according to his needs." His theories are permeated with implied moral judgments.

Marx's significance. Marx's significance does not lie in his contributions to social philosophy or to economics. It lies rather in the fact that he wrote the bible of the developing socialist movement. Marxism provided its adherents with a creed, a "scientific" explanation of all social events, past and present, a method of thinking (the dialectic), a code of morals,⁴ and an exhilarating feeling of being part of "the wave of the future." Soviet communism has many of the characteristics of a religion even though its deity is an abstraction called "science." Much of this would doubtless have been disavowed by Marx himself, but he provided the material with which Lenin and Stalin were able to construct their atheistic religion.

⁴ "Bourgeois" morality is class morality, a part of the economic "superstructure." Along with religion it is merely a useful device of the owning class to keep the proletariat in subjection. Any action which furthers the revolution is a morally defensible action. See Engels, *Anti-Dühring* and Lenin's address to the Russian Young Communist League, October 2, 1920.

THE INTERNATIONAL REVOLUTIONARY MOVEMENT

Through his friend and supporter Engels, Marx had met a few German revolutionaries in London in 1845, where they had organized as the "German Workers Educational Society." Similar groups were formed in Paris and Brussels, and there was a joint conference of these in London in 1847 at which an International Communist League was created. It was at the request of this group that Engels and Marx wrote the *Communist Manifesto*.⁵ The following year, 1848, was the "year of revolutions" in Europe, and the activities of the League led to its being proscribed in France and Germany although it was permitted to continue its existence in England. It was not until 1865, however, that the International Federation of Workingmen was formed at Geneva with a constitution drafted by Marx. For four successive years this First International held annual meetings which aired serious disagreements between the delegates from various countries who varied in their viewpoints from stolid English trades union reformism to the anarchism of the followers of Proudhon. By 1869 there were several million adherents. It was destroyed finally by the *Communard* attempt in Paris in 1871. This was brutally suppressed by Thiers, and the International was given wide publicity everywhere as the author of the bloodshed and atrocities connected with the revolutionary attempt. The more moderate elements in the International then withdrew, but the end did not come until the break between the Marxists and the anarchist adherents of Bakunin. The last meeting was held in Philadelphia in 1876, under cover of the Centennial celebration.

The Second International. Marx did not favor any immediate revival of an international organization, but his influence continued to grow, especially in Germany where the Marxist Social Democrats won the largest single delegation to the Reichstag in 1890. There were Marxists elsewhere too, although in most countries the non-Marxist working class parties were more important. A number of these, excluding the Anarchists, but combining Marxist and non-Marxist groups formed the Second International in Paris in 1889. As an organization this was basically a Marxist group but with little emphasis upon revolution and much upon reform. The German Social Democrats had been moving steadily away from the extreme Marxist position and were becoming a purely reformist party. When the First World War broke out in 1914 every Socialist party supported its own government and the international solidarity of the working class movement proved to be nonexistent.

The Third International. These events more than ever convinced Lenin of the correctness of his position that the only truly revolutionary body would

⁵ Marx chose the name "Communist" rather than "Socialist" in order to distinguish his movement from the "utopian" socialism of Louis Blanc and his followers.

be one composed of devoted Marxists under firm leadership and strict discipline. It was with this intention that he formed the Third International in March, 1919. Lenin had long been an active Marxist. He had organized a Marxist league in St. Petersburg as early as 1895. This led to a term in Siberia after which he went to Switzerland and began to edit a Russian newspaper, which was smuggled into Russia for clandestine circulation. As time went on, other Marxist leagues were started in various places in Russia and an attempt was made to found a party. This was broken up by the secret police and thenceforward the meetings had to be held abroad. It was at a London meeting in 1903 that the split occurred between the "hards" who held to Lenin's ideal of a disciplined group of devoted revolutionaries with no outside alliances and the "softs" who were willing to admit all individuals and groups in general sympathy with Marxist ideals. The "hards" won by a narrow majority and thenceforward were called Bolsheviks, which means "majority." The "soft" minority were known as Mensheviks.⁶ In some ways the latter were more truly in the Marxist tradition, relying as they did upon the inevitability of a proletarian triumph, whereas Lenin was inspired by the traditional violent tactics of the Russian revolutionaries. The Bolsheviks did not become a completely separate party until 1912 when a Bolshevik Central Committee was established in Prague and a legal newspaper founded. This was *Pravda*, and one of its first editors was the Georgian disciple of Lenin, Josef Stalin.

Social Revolutionaries. It should not be assumed that the Marxists of the two camps (Bolshevik and Menshevik) were the only revolutionaries in Russia. Much stronger numerically were the Social Revolutionaries, who emphasized the virtues of the peasant and were primarily interested in land distribution brought about by as much violence as might be necessary. Numerically, the moderate non-Marxist parties were the strongest of all.

The revolution of March, 1917. The breakdown of tsarist authority in the spring of 1917 was not brought about by the Bolsheviks. They had nothing to do with it. Lenin was still in Switzerland and Trotsky was in New York. Indeed, it took them by surprise. It would be incorrect to attribute the collapse to the concerted action of any group or party.⁷ The fact was simply that the régime had no more friends or supporters even among the classes that might have been expected to uphold it. Perhaps the peasantry of the remote villages still venerated the tsar, but this did not interfere at all with their burning the manor house and seizing the squire's cattle.

The events of March, 1917. The Petrograd bread ration, already small,

⁶ In the party membership at large there were more Mensheviks than Bolsheviks.

⁷ "... "the people of Russia, by a common but unconcerted impulse, stood out from this State, of which they no longer had need: and, almost in a moment, it was not."—Sir John Maynard *Russia in Flux* (New York, 1948) p. ix.

was further reduced in March. At the same time a lock-out of metal workers filled the streets with embittered workmen. Soon the city was suffering from something close to a general strike. When the conservative Duma dared to warn the tsar that the situation was dangerous, it was promptly dissolved. Then a portion of the garrison troops mutinied, went into the streets, and helped the strikers to disarm or assault the police. The muntiny spread and soon the police had disappeared from the scene. Other cities caught the fever and everywhere the garrisons, maintained precisely in order to prevent this sort of happening, turned themselves into a rough-and-ready army of the revolution. The whole affair was so spontaneous and so few were willing to fight for the tsar that in the entire country only about 1,300 persons were killed.

The provisional government. In many places soviets sprang up to provide a local government, and in Petrograd a national provisional government was created by the Duma with Prince Lvov as premier. The other cabinet members were mainly Octobrists (conservatives) and Kadets, but one member of the Trudoviki-Labor group, Alexander Kerensky, was included.

The Petrograd soviet. From the beginning, this government suffered from the interference of the Petrograd soviet of soldiers' and workers' deputies.^a The soviet refused to accept any responsibility, but decided upon policies and compelled their approval by the provisional government. It was able to do this because it commanded the loyalty of both the city workers and the troops. Although it had Bolshevik members, they were a minority and not yet in control. One of the soviet's first demands was the abdication of the tsar and later the arrest of the whole imperial family.

With the disappearance of the police and the disaffection of the army, something approaching anarchy spread throughout Russia. The peasant revolt had interfered with food supply for both cities and the front. Meantime the provisional government continued to pass reform measures, while any real authority it possessed was fast disappearing. Possibly its major errors were, first, to fail to take vigorous steps to restore general order and suppress its revolutionary opponents, and, second, to insist upon a continuation of the hated war.

The November revolution. Lenin had arrived, with German connivance, in the famous sealed train, in April. At once he issued his campaign document, the "April theses," which demanded peace at once. He also coined the slogan, "all power to the soviets." By June, the Bolsheviks had about 100 delegates in the soviet, but this body had between 800 and 900 members. An attempted revolution took place in June under Bolshevik leadership and was sup-

^a This soviet was created when a self-appointed "executive committee" asked the troops and workmen in the city to elect deputies.

pressed, the Bolshevik leaders going into hiding. The official Bolshevik version of this incident is that Lenin thought the attempt premature but that it had occurred spontaneously and he then took charge of it. Kerensky was now premier and he failed to take vigorous action against either the Bolsheviks or the reactionary elements who were now regrouping under the leadership of General Kornilov.

Events of November 7, 1917. In the meantime the Bolsheviks had thrown themselves into army and labor politics so that when the second All-Russian Congress of Soviets met on November 7 it had a Bolshevik majority. Trotsky had planned a *coup d'état* which came off with machine-like precision. Bolshevik troops quietly and simultaneously occupied all public buildings and militarily important locations. At the same time all members of the government were arrested except Kerensky who managed to escape. A new government was set up calling itself the council of people's commissars. All its members were Bolsheviks with the exception of four commissars who were Left Social Revolutionaries.⁹ At the same time the Congress of Soviets declared Russia to be the Russian Socialist Federated Soviet Republic.

The results of the November revolution. The soviets now had achieved in fact the power that Lenin had demanded for them. All over Russia the local soviets became supreme, the only governmental authority in the locality. Some, indeed, were ill prepared to accept the responsibility but they could not escape it. A few of the more moderate or less imaginative Bolsheviks regarded the new government as another provisional régime to last until a popularly elected constitutional convention could be called. Lenin, however, saw the chance to grasp and keep the power in Bolshevik hands. He had never respected "bourgeois democracies" and saw no reason to permit one in Russia if it were possible to skip that stage in the Marxist progression. He called, therefore, for an immediate "dictatorship of the proletariat." Translated into terms of actuality this meant the dictatorship of the Bolshevik party along with a few Social Revolutionaries as a sop to the peasants. The official Bolshevik history estimates that there were about 270,000 Bolsheviks in all Russia at this time.¹⁰ Evidently Lenin was right in his assumption that leadership and discipline would enable a very few to achieve power in an amorphous, chaotic political situation. In Sir Jolin Maynard's phrase, they rode the popular whirlwind to power. For they offered the two desiderata: peace, and land to the peasants.

The constituent assembly January, 1918. Elections had been held in

⁹ The junior partnership of the Social Revolutionary party lasted until July, 1918. At this time the Social Revolutionaries attempted a *coup d'état* and were promptly suppressed and outlawed. See R. H. Bruce Lockhart, *British Agent*, pp. 292 ff. for a description of this amazing incident.

¹⁰ *History of the Communist Party of the Soviet Union (Bolsheviks)* (New York, 1939) p. 218.

November, before the Bolshevik coup, for the constituent assembly which was supposed to create a constitution for the new Russia. The Bolsheviks permitted it to assemble on January 5, hoping, perhaps, that it could be forced into approving Lenin's plans. Its membership, however, contained a strong non-Bolshevik majority. Together with their left-wing Social Revolutionary allies, the Bolsheviks could count on only 235 votes to 492. The Assembly began by refusing to recognize the legality of the soviet régime. When it met next morning, January 6, Red soldiers hustled the members out and told them not to return. So ended, really before it began, the liberal constituent assembly that had been the dream and hope of progressive Russians for the past 100 years.¹¹

The peace of Brest-Litovsk and the civil war. Lenin saw clearly that Russia must have peace with Germany at any price. No government could hope to continue that failed in this. Accordingly he swallowed the bitter pill of losing Russian Poland, the Baltic states, and the Ukraine, and signed a peace with the Imperial German authorities on February 18, 1918.

But internal peace was far from being secured. Not only the reactionaries like General Kornilov but the Social Revolutionaries were now bitterly anti-Bolshevik and Russia slipped rapidly into a state of civil war. Lenin's CHEKA¹² went to work on the enemies of the régime and Trotsky built up a Red army to crush the Whites. All over Russia, towns and villages were alternately in Red and White occupation with both sides using terrorism against their real or supposed enemies. The Allied powers made a feeble gesture against the Bolsheviks, and British, American, and Japanese troops were sent to Russia, but so few as to be quite useless beyond the ports they occupied. By the end of 1920, Trotsky's Red armies had suppressed all open opposition and driven back the Polish forces that had penetrated as far as Kiev.

War communism. During the civil war there was no opportunity for the Bolsheviks to organize either the government or the economy in a systematic way. They had inherited a social chaos and a chaos it remained for some four years. To be sure, all factories were nationalized, private trading forbidden, and private capital mostly confiscated. The old managerial class was no longer available for the most part, and there had been no time to train new "proletarian" managers. Throughout the period production dropped. It was possible to keep going only by relying upon existing stocks of goods and the expropriations taken from the middle class. The peasants, too, suffered from ex-

¹¹ The official Communist party history of the revolution, although detailed, disposes of the constituent assembly and its dissolution in a single sentence. *Op. cit.*, p. 214.

¹² These initials stood for the Extraordinary Commission for the Repression of Counter-revolution, Sabotage, and Speculation. It had been created by Lenin in December, 1917, and became very active after the Social Revolutionary uprising in July and the assassination attempt against Lenin by Dora Kaplan, a Social Revolutionary, in August, 1918.

appropriations, and in many areas were in virtual revolt against the régime they had so lately hailed with enthusiasm.

The New Economic Policy. The ever-flexible Lenin met the crisis in 1921 by what seemed to doctrinaire Communists a betrayal of the revolution. At the tenth Congress of the Communist party (March, 1921) he proposed his New Economic Policy.¹³ It had for its aims the increase of production, the restoration of normal trade between industry and agriculture, and the appeasement of the peasantry and of the workers who were increasingly resentful of the growing scarcity of food and consumers' goods. Its means were simply the partial restoration of private business enterprise, that is, the restoration of capitalism in a part of the economy. To be sure, Lenin was careful to retain in state hands the basic industries, the "commanding heights" of the economy, so that it would be possible at some future time to restore complete socialism.

Its results. Private trade became the rule at the retail level and invaded the wholesale field. The state enterprises that remained operated like private corporations in their buying and selling. Shrewd individual traders became rich almost overnight.¹⁴ The peasants were encouraged to market their produce, which was no longer expropriated. Difficulties continued to exist, and in particular it proved impossible to stabilize industrial and food prices so that they would remain relatively constant. Nevertheless there was a distinct improvement in the economic situation.

Stalin versus Trotsky. Lenin died in January, 1924, and there was an immediate struggle between the two principal Bolsheviks to inherit his great prestige and power. Trotsky and his allies, Zinoviev and Kamenev, represented the "Left Opposition" within the Communist party. They were for the immediate encouragement of world revolution and a rapid advance in industrialization within Russia. Leon Trotsky was far better known to the ordinary Russian than was Stalin and he was especially renowned as the military genius of the civil war. But Stalin had been secretary-general of the party for a sufficient period to enable him to make sure that his friends occupied the key positions and that they in turn could replace minor party dignitaries who were not reliable Stalinists. Accordingly, with the aid of the "Right Opposition," Bukharin and Rykov, Stalin was able to triumph over Trotsky at the party congresses and finally to drive him from the country as a refugee. This done, Stalin turned on his former allies of the Right and removed them from all authority and influence.¹⁵

The first Five-Year Plan. Stalin then proceeded to adopt certain ideas of

¹³ Generally known by its initials NEP. The new class of businessmen it brought into being were called "Nepmen."

¹⁴ See Walter Duranty, *I Write as I Please* (New York, 1935).

¹⁵ Bukharin was executed in 1939.

both Left and Right. He began to squeeze the Nepmen and take into state hands more and more of the economy. In 1928 he introduced the first of the famous Five-Year Plans for the advancement of the national economy, and in 1929 the New Economic Policy was finally liquidated.

Compulsory farm collectivization. On the agricultural side of the economy Stalin accepted the "leftist" point of view and came out for compulsory collectivization. The wealthier peasants, anathematized as "kulaks," were forced off their farms and the poor and middle peasants compelled into collectives whether they chose to join or not.¹⁶ Many thousands of well-to-do peasants were killed in the process. Collectivization had begun much earlier but as a voluntary affair. It had some attraction for the poorer peasants. Indeed, most of them were already part of a backward kind of village collective, with a tiny holding, subject to periodic redistribution, cultivating long thin strips of land, condemned to the ancient and inefficient three-field system of crop rotation. They were not prosperous independent farmers after the American pattern. But the more conservative even among the poor peasants were reluctant to abandon their ancient ways, and the wealthier peasants could see no advantage in joining their lot with the stupid and ignorant. In January, 1928, a decree was passed excluding kulaks from the village soviets. But the blow fell two years later, in January, 1930. The government announced that complete collectivization was to be accomplished within three years and the kulak class was to be "liquidated." This meant the seizure of the property, if nothing else, of some 5,000,000 people. In fact, many were killed, their houses were burned, and many more were turned out to beg or get what work they could find.¹⁷ Stalin called a halt to the turbulent and disorderly process with his speech of March 30, 1930, and there was even some dissolving of collectives already formed. Many peasants had already slaughtered their cattle, and after bad harvests in 1931 and 1932 there was actual famine in the winter of 1932 and an unorganized peasant revolt in the North Caucasus and the Ukraine which was crushed with severity. The collectivization movement went on in more orderly fashion and by 1936 almost 90 per cent of all peasants in the USSR were members of collectives.

It can be said that by this time the revolution was really won and that any chance for a successful domestic insurrection had passed.

Lenin's 1917 program. Immediately after the revolution had been accomplished Lenin had proceeded to draw plans for his socialist state. A re-

¹⁶ The word "kulak" means "fist" and was supposed to indicate the cruel, grasping nature of the well-to-do peasant. Some indeed were hard employers and usurious money-lenders, but, on the whole, they were the most advanced and productive of farmers.

¹⁷ The status of kulak was indefinite and seems to have included, at the start of the drive, any peasant whose relative wealth had made him unpopular in the village.

public of soviets of city workers and poor peasants was to be established and the police, army, and civil service were to be abolished. A general arming of the population would replace the police and the army, and with the disappearance of the exploiting class the administrative apparatus of the state would be very much simplified. Little more than ordinary bookkeeping would be needed. In industry the old managerial class would be replaced by centralized control in the hands of the workers. There would be a leveling off of wages at all grades with complete equality of pay as the eventual goal. In agriculture the big estates might be turned into coöperatives and model farms, but the rest should be handed over to the peasants.¹⁸ Finally, Lenin hoped that Russian success would stimulate other European communist revolutions, particularly in Germany. Technical knowledge, scarce in Russia, might then be available from other communist countries.

The successes and failures of Lenin and his successor to implement this program will be the subject-matter of the following chapters.

Marxist Philosophy. A useful digest of Marx's *Capital* is published by the Modern Library. A good short critical treatment is A. D. Lindsay, *Marx's Capital*. Useful guides are provided in Sidney Hook, *From Hegel to Marx* (New York, 1936), and *Towards the Understanding of Karl Marx* (New York, 1933), as well as G. D. H. Cole, *What Marx Really Meant* (New York, 1937). R. N. Carew Hunt, *The Theory and Practice of Communism* (London, 1950), devotes considerable space to a critical examination of Marxism and to Lenin's contributions to its development. Lenin's major writings are available in *Selected Works of V. I. Lenin* (12 vols., New York, 1935-39). Perhaps the most compact expression of his general theory is in *The State and Revolution* (4th ed. New York, 1932). Stalin's most considerable work is *Leninism* (2 vols., New York, 1928-33). A useful compilation of his writings and speeches edited by M. R. Werner is *Stalin's Kampf* (New York, 1940). Another compilation is in House Document No. 619 (80th Congress, Second Session) Supplement 1 "One Hundred Years of Communism, 1848-1948."

The Russian Revolution. The official Stalinist history is contained in the far from impartial *History of the Communist Party of the Soviet Union (Bolshevik)* (New York, 1934). A somewhat different version is contained in Leon Trotsky, *The History of the Russian Revolution*, translated by Max Eastman (3 vols., New York, 1932). A famous panegyric is John Reed, *Ten Days That Shook the World* (New York, 1926). See also Victor Chernov, *The Great Russian Revolution* (New Haven, 1936), and W. H. Chamberlin, *The Russian Revolution 1917-1921* (2 vols., 1935). Attention should also be called to E. H. Carr, *A History of Soviet Russia: The Bolshevik Revolution* (4 vols., New York, 1950-1954).

¹⁸This might seem to be an attempt to make capitalists out of the peasants, but it was compatible with Marxism because of Marx's curious notion that land is not capital.

CHAPTER XL

Soviet Russia: Governmental Framework and Practice

To develop democracy to its logical conclusion, to find the forms for this development, to test them by practice, and so forth—all this is one of the fundamental tasks of the struggle for the social revolution.—Lenin

No government can be understood merely by an examination of its written constitution. Actual practice, the growth of conventions, the part played by extraconstitutional institutions such as political parties, must all be considered before the picture is clear and meaningful. Of no government that we have considered is this so emphatically true as it is of the USSR.

There can be little doubt that Lenin was, at the start, very hopeful of the quick achievement of a real communist democracy. A brilliant revolutionary and superlative politician, his Marxism had led him into the naiveté displayed in his 1917 program, outlined at the close of the preceding chapter. He wanted two incompatibles: the dictatorship of the Bolshevik leaders and genuine mass democracy. As events soon proved that this was utopian, he chose the former as the more important. At the same time he hoped that time would see the development of communist democracy, and he established a scheme of government designed to permit a measure of mass participation.

The 1923 constitution. In the summer of 1918 the second All-Russian Congress of Soviets adopted the constitution drawn up by Lenin and his associates for the Russian Socialist Federated Soviet Republic (Russia proper). After the civil war had been won, this constitution became the model for the one adopted to serve the entire USSR. Put into effect in 1923, the USSR constitution was formally ratified by the Supreme Soviet of the USSR in January, 1924.

By this constitution the USSR was declared to consist of a federation of

seven union republics: the RSFSR, the Byelorussian SSR, the Ukrainian SSR, the Turkoman, Uzbek, Tadzhik, and Transcaucasian SSR's. The supreme political authority was declared to be the All-Union Congress of Soviets, a huge parliament of two houses, the Soviet of Nationalities and the Soviet of the Union, with one delegate for every 25,000 industrial workers and one for every 125,000 peasants. Only these classes (the proletariat) were enfranchised, and all persons tainted by bourgeois origin or association with the tsarist régime might not vote.

In addition to the disfranchisement of the old middle class there were two peculiarities about this constitution: first, the distinction between rural and urban voters, justified as giving greater representation to the more advanced and indoctrinated industrial worker; second, the use of indirect election to a degree that separated the city voter by two stages and the rural voter by as many as four stages from "his" representative in the Supreme Soviet. One other feature deserves comment. The primary soviet organization was in the factory or farm village and so gave occupational rather than geographic representation as in our system. This was abandoned under the new (1936) constitution. Historically, this system was not without justification. The soviets had developed naturally as the spontaneous grouping of a village, an army unit or a factory. The peasants who had become factory workers or soldiers carried with them the ancient idea of the village meeting and applied it in their new surroundings. It was fundamentally a "proletarian" institution with which the propertied classes had nothing to do. In 1918 the congress of peasants' soviets amalgamated with the congress of workers and soldiers' deputies, and the greater size of the latter was simply retained in the constitution. This historical accident accorded well with Bolshevik ambitions to keep control of the soviets.¹

How the 1923 constitution worked. The result of this peculiar representative system was a pyramid of soviets, the ones at the bottom level frequently not consisting of Communists, especially in farm areas. As one rose in the hierarchy, Communist membership increased in frequency. It was the only tolerated party, its members were devoted to agitation and politics, opposition to them was dangerous, especially with the voting by open ballot, and for these reasons they tended to occupy the higher and more significant soviet positions. From being the vanguard of the revolution, the party was rapidly turning into a ruling élite. At all events the composition of the soviets was of minor importance. At every level the Communist party held the actual power and operated either through the soviets or, at times, independently of them in making decisions of importance. The relative importance of the Supreme Soviet is indicated by the fact that only seven congresses were held in a period

¹ See Sir John Maynard, *Russia in Flux* (New York, 1948), pp. 499-500.

of more than eighteen years. The government got along very well without them.

The 1936 (Stalin) constitution. The constitution of 1923 lasted thirteen years, when it was replaced by one attributed to Stalin. The seventh All-Union Congress of Soviets in 1935 had created a constituent committee with Stalin as chairman. This committee promptly drafted a proposed constitution which was widely publicized. People were urged to submit amendments, and thousands were actually sent in. Of these, four were adopted with Stalin's approval. The eighth (special) All-Union Congress of Soviets met in November, 1935, and was addressed by Stalin, who hailed the new constitution as recording the establishment of socialism, the disappearance of class warfare, and the triumph of federal equality among the nationalities. His address received a great ovation and the entire constitution with the four approved amendments was accepted with enthusiastic unanimity, after a number of speeches full of praise for Stalin and the wonders of Soviet socialism.

The nature of the constitution. What kind of constitution is it? At first glance it seems surprisingly similar to those of parliamentary democracies with which we are familiar.² To be sure, it begins by asserting that the USSR is a socialist state and that all power belongs, not to the people, but to the soviets that represent them. Small-scale private enterprise without employees is permissible, and private ownership of dwellings, furniture, and personalty as well as the right of inheritance is "protected by law."

The soviet federation. The USSR is a federal state with sixteen union republics.³ The government of the entire union, however, enjoys wide powers, involving authority over foreign affairs and defense, a monopoly of foreign trade, acceptance of new union republics, reorganization of governmental units within the republics, establishment of an all-union economic plan, and administration of economic and financial institutions of all-union importance, together with the establishment of "basic principles" in the use of land, natural resources, education, and public health. Broadly speaking, other matters are left to the union republics, which are given by Article 17 the extraordinary privilege "freely to secede from the USSR." They are guaranteed territorial

² The text of the draft constitution was printed in the *New York Times*, June 26, 1936. It is also given in *International Conciliation*, Pamphlet No. 327 (February, 1937). With subsequent amendments it is given in Hill, Stoke, and Schneider, *The Background of European Governments* (New York, 1950) pp. 346-362; Laing *et al.*, *Source Book in European Governments* (New York, 1950), pp. 234-262. One of these should be consulted.

³ These are the RSFSR, and the Ukrainian, Byelorussian, Uzbek, Kazakh, Georgian, Azerbaidzhan, Lithuanian, Moldavian, Latvian, Kirghiz, Tadzhik, Armenian, Turkmen, Estonian, and Karelo-Finnish Socialist Soviet Republics. Five of these represent conquests of the second World War. These are the Karelo-Finnish (from Finland) and the Moldavian (Northern Bucovina and Bessarabia from Rumania) Republics and the Baltic states, Lithuania, Latvia, and Estonia, reoccupied by the Russians by agreement with Hitler. All were added in 1940 and occupied by Soviet forces without regard to the wishes of the local population.

integrity, the right to have direct foreign relations with foreign states, and their own "military formations." On the other hand, the laws of the USSR prevail over any conflicting republic law and citizenship is a union matter.

The USSR governmental organs. The "highest organ of state power" in the USSR is the Supreme Soviet. This consists of two equal chambers: the Soviet of Nationalities and the Soviet of the Union. The latter is directly elected from single-member districts on the basis of one deputy for 300,000 persons. The former is elected by areas: twenty-five deputies from each union republic, eleven deputies from each autonomous republic, five deputies from each autonomous region, and one deputy from each national area. Both chambers are elected for a term of four years and both may initiate legislation. Theoretically all legislation is passed by the chambers and they also, in joint session, appoint the council of ministers.

The presidium. The Supreme Soviet has a collective presidency called the presidium. This consists of thirty-two members: a chairman, sixteen vice-chairmen, and fifteen others.⁴ They are elected at a joint meeting of the Supreme Soviet's two chambers. The presidium convenes sessions of the Supreme Soviet, issues decrees, appoints and removes the military high command, has the power of pardon, receives and accredits diplomats, ratifies treaties, proclaims martial law, and performs other functions normally associated with the executive power. The chairman of the presidium has some of the functions, therefore, of a chief of state and has sometimes been called, inaccurately, "the President of the USSR."

The chief function of the presidium is to act as if it were the Supreme Soviet between sessions of the full legislature. The unlimited decree-issuing powers of the presidium were demonstrated before the elections of 1946. It issued a decree raising the minimum age of deputies to the Supreme Soviet from eighteen to twenty-three (a constitutional amendment) and another providing for representation of Red army units serving abroad (also a constitutional amendment). Both were formally ratified by the Supreme Soviet which had been elected in accordance with these amendments.

The ministry. The council of ministers⁵ of the USSR is declared to be the highest executive and administrative organ and to be responsible to the Supreme Soviet or to its presidium between sessions. The ministries are numerous as befits a totally socialized state. Some are all-union, which means that they operate directly throughout the USSR; others are union-republic, meaning that they normally operate through a corresponding ministry in each of the union republics. The number of ministries and the category to which they belong

⁴ In practice, the vice chairmen are the chairmen of the presidiums of the sixteen union republics.

⁵ Formerly called the council of people's commissars (*sovnarkom*).

are subject to constant change. For example, the foreign affairs and defense (armed forces) ministries were all-union until 1944, when they were shifted to the union-republic category to justify separate membership of the Ukraine and Byelorussia in the United Nations. At the present time there are twenty-three all-union and twenty-two union-republic ministries.⁶ Since 1947 the constitution has not listed the ministries which exist at the republic level only.

Agencies of near-ministerial rank. In addition to the ministries proper, there are a large number of commissions, committees, and chief administrations which are attached to the council of ministers for discussion and, in some cases, with a vote in the council. As of April, 1954, ministerial seats were occupied by the chairmen of three of these: the State Committee on Construction Affairs, the Committee of State Security, and the Board of the State Bank.

Local government organs. Each union-republic has governmental arrangements similar to the USSR, with a unicameral Supreme Soviet which enjoys sole legislative authority and the right to adopt and amend the republics' constitutions. It is similarly equipped with a presidium and appoints and dismisses its council of ministers. Similar provisions exist for the lesser units: autonomous republics, territories, regions, autonomous regions, areas, districts and so forth. In every case the constitution must conform with that of the higher unit which also has the right to annul decisions of the inferior body. In particular, the republic budgets must be included in the union budget and approved by the Supreme Soviet of the USSR.

The judicial system. All judges are elected by the appropriate Supreme Soviet for a term of years, five years in the case of the Supreme Court of the USSR, the special courts of the USSR, the supreme courts of the union republics, the autonomous republics, and the courts of the territories, regions, autonomous regions, and areas. People's courts are elected by the citizens of the districts for a term of three years.

There is general supervisory power in the hands of a procurator-general of the USSR who is appointed by the Supreme Soviet of the USSR for a term of seven years. He appoints subordinate procurators for the republics and

⁶ The list confirmed by the Supreme Soviet of the USSR on April 21, 1954, was as follows —all-union ministries: Aviation Industry, Automobile Tractor and Farm Machine Building, Paper and Wood Processing, Higher Education, Geology and Conservation of Mineral Resources, Medium Machine Building, Machinery and Instruments, Merchant Marine and Inland Shipping, Oil Industry, Defense Industry, Procurements, Transportation, Radio Industry, Communications, Machine Tools, Construction Machinery and Road Machine Building, Construction of Metallurgical and Chemical Plants, Shipbuilding Industry, Transport Machine Building, Heavy Machine Building, Chemical Industry, Power Plants, Electrical Equipment. The union-republic ministries: Foreign Affairs, Defense, Highway Transport and Highways, Trade, Internal Affairs, State Control, Public Health, Culture, Lumber Industry, Meat and Dairy Products Industry, Food Products Industry, Building Materials Industry, Consumers' Goods, Fishing Industry, Agriculture, State Farms, Construction, Coal Industry, Finance, Nonferrous Metallurgy, Ferrous Metallurgy, Justice.

smaller units down to the level of the autonomous region, and these in turn appoint subordinate procurators for areas, districts, and cities.

The Soviet bill of rights. Articles 118 to 133 are headed "Fundamental Rights and Duties of Citizens." This was a departure from the previous constitution which contained no bill of rights. As one might expect in a constitution of Marxist inspiration, the first right mentioned is the "right to work," which is explained as meaning the "right" to be given gainful employment. This is followed at once by the "right to rest and leisure." This, too, is spelled out as meaning a short working day for "arduous" trades, annual vacations with pay, and rest-houses, clubs, and so forth for the workers.⁷ The usual welfare state benefits of social insurance, as well as free medical benefits and health resorts, are also listed. Education is also a right of citizens, ensured by universal elementary education which is free up to the eighth grade, by state scholarships for exceptional students, and by free vocational and technical education.⁸ Women are guaranteed equal rights with men in all activities and in addition state aid is to be given to mothers of large families and unmarried mothers. Working women are entitled to maternity leave on full pay.

Personal rights. Now we come to the rights that seem to give civil and political freedom. Complete racial equality is an "indefeasible law." Any restriction of citizens' rights on a racial basis or any advocacy of racial exclusiveness and the like is punishable by law. Freedom of religious worship as well as anti-religious propaganda is recognized. Freedom of speech, of the press, of assembly and public demonstration are all "guaranteed by law."⁹ Furthermore, "the working people and their organizations" are given paper, printing presses, the use of the street, and everything necessary to transform these rights into an actuality. People are guaranteed the right to unite in public organizations, trade unions, coöperatives, cultural and other societies . . . "and the most active and politically conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union (Bolsheviks) . . ." Inviolability of the person is guaranteed; arrest is legal only by court order or with approval of a procurator. Inviolability of homes and privacy of correspondence is likewise guaranteed.

⁷ The original text read "the right to rest and leisure is ensured by the shortening of the working day for the overwhelming majority of workers to seven hours." The fact that this "right" represented an alleged goal or aim rather than a legal right was emphasized by the introduction of a universal eight-hour day by decree in June, 1940, seven years before the present wording was substituted.

⁸ The original text indicated that education in general would be free, including higher education. Tuition fees for upper high school and higher educational institutions were introduced by a decree of September 1, 1940.

⁹ The preamble of Article 15 is significant. These freedoms (speech, press, assembly and demonstration) are guaranteed: "In conformity with the interests of the workers and in order to strengthen the socialist system." Obviously, this is a serious limitation upon the exercise. A nonsocialist or antisocialist expression of opinion is not free or protected by the constitution.

The right of asylum is offered to foreigners who have been persecuted for defending working class interests or for their scientific activities or for fighting for national freedom.

Duties. Duties of the citizen include keeping the constitution and the laws, safeguarding and defending "socialist" (that is, state) property, and performing military service. Treason is declared to be the "most heinous of crimes."

The electoral system. Soviets at all levels are chosen by universal suffrage and secret ballot. All citizens eighteen years of age and over have the vote except for the insane and those convicted of crimes whose sentences include the loss of franchise. Women and soldiers have an equal right to election with all other citizens. The right of the voters to recall their representative at any time by majority vote is guaranteed. Nominations are confined to "public organizations and societies of workers: Communist Party organizations, trade unions, coöperatives, youth organizations and cultural societies."

Amendments to the constitution. The constitution is amendable by a two-thirds vote of each chamber of the Supreme Soviet of the USSR.

THE MEANING OF THE CONSTITUTION

Fundamental considerations. The constitution can be understood only if we keep in mind the following considerations:

(1) Socialism, as practiced in the USSR, is taken for granted and may not be challenged in any way.

(2) No political parties other than the Communist party may exist. As classes have been "abolished," and as political parties are the expression of opposed classes, there is no excuse for the existence of any but the single approved party.

(3) Freedom to criticize exists, but only freedom to criticize the zeal and ability of officials to carry out the program and policies of the government. No criticism of the program itself is permissible, except that it is allowable to urge the establishment of higher production goals.

The first two of these principles are implicit in the constitution itself and the third is a corollary of the second. Keeping them in mind it is possible to understand what is meant by "democracy" in the USSR, obviously something quite different from our Western conception.

Changes from the 1923 constitution. We may note at the start that the new constitution represents a much closer approximation to Western parliamentary systems than did the original soviet arrangements. Occupational representation gave way to district representation and indeed to single-member-district representation familiar in Britain and the United States. Of course, proportional representation would make no sense in a one-party state. It may also

be noted that the old type of soviet, enjoying all the powers of government with no distinction between legislative and administrative functions, now gives way to a soviet which is purely a legislature. To be sure, its presidium acts as a legislature between sessions and also has many executive duties, but the administration is left to the council of ministers or its equivalent at each level of the federation. Private rights now receive much greater consideration and in some cases seem to be almost identical with those enjoyed in the Western democracies. The secret police receives no mention at all, having become a part of an ordinary ministry, internal affairs. Voting is now directly by the citizens for the soviet at all levels. This again is a Western idea replacing the Russian pyramid of councils, each electing to the higher one. Further, with Stalin's proud announcement of the destruction of all classes, class origin is no longer a matter of interest and has no effect upon the franchise. These facts misled some observers into assuming that the Soviet Union was now settling down into a liberal democracy on the Western pattern.

The crucial tests. The significant points of a political democracy are to be found in its nominating and electing system (of the two, the former may be even more significant), in the actual powers enjoyed by the elected bodies, and in its treatment of civil liberties including the degree and kind of tolerance given to individuals and parties that oppose the government of the moment. The reader will observe that nothing has been said about majority rule. This is because majority rule is an obvious mechanical device for reaching a working decision, but most emphatically is not an exclusive criterion of democracy, for it may well be found in dictatorships.¹⁰ If we examine the Soviet system at the points mentioned, we shall be able to discover what kind of "democracy" exists in the USSR.

Nominations. According to the constitution and laws, nomination of candidates to the Supreme Soviet of the USSR, and likewise to the other supreme soviets, is open to all citizens aged twenty-three or over and may be made by a specified list of associations. Except for the Communist party and its subordinate branches, none of these is purely political *but all are controlled by the Communist party*. Communist control and membership is stronger in the higher echelons of these groups, and it is significant that according to Soviet commentators,¹¹ the primary cells of the organizations may not pick nominees. This must be done by the *rayon* (county) or higher committees of the nominating group. It has become the practice for nominations to be made

¹⁰ One may assume that Hitler was the adored Leader of more than half the German people, that they reveled in giving him a blind, mindless obedience, and that they approved of the suppression of minorities, of political parties, and of civil liberties. Did this make Nazism a democratic system?

¹¹ Cited in Barrington Moore, Jr., *Soviet Politics—the Dilemma of Power* (Cambridge, Mass., 1950).

by mass meetings on collective farms or in city election districts rather than by the designated associations. Voting at such meetings is open and opposition to the candidate favored by the Communist party is rare. It is customary to place in nomination some prominent members of the Politburo as well as the candidate who will actually represent the district. These famous men withdraw their names, before the election, from all but a single constituency. There seems to be little prenomination campaigning by rival candidates. At any rate, the press does not report any. Evidently the candidate picked for a given district, who may be either a Communist or a "nonparty Bolshevik,"¹² is either satisfactory to the party or is replaced at party insistence before election.¹³ The fact that this is a relatively rare occurrence would seem to indicate the effectiveness of Communist control over the original nominations.

If there were any real political struggle it would occur at the nominating level because in almost all cases only one nomination per district is made so that nomination is tantamount to election. No doubt there are many who would like to secure the nomination because it is not only a considerable honor but there are various privileges and emoluments connected with membership in the Supreme Soviet. So complete is Communist control, however, that the struggle between rival potential candidates on purely personal, nonpolitical grounds is suppressed, at least publicly, and the successful candidate receives the acclaim of all.

Elections. There have been four elections of the Supreme Soviet of the USSR under the new constitution, in 1937, 1946, 1950, and 1954. Doubtless the prolonged life of the first Supreme Soviet was due to the war. Elections are the occasion of a holiday, a union-wide patriotic celebration, and tremendous organized demonstrations of enthusiasm for the revolution. Only one candidate exists in each district and the only way in which opposition can be registered is to indicate on the ballot that he is not the voter's choice or to abstain from voting. Few desire or dare to do this.¹⁴ Every possible device is employed to secure a complete turnout. Every city, town, and village is decorated with flags and bunting; bands play patriotic and folk music. By noon in the 1950 elections, according to Radio Moscow, every eligible voter in Stalin's own district in Moscow had cast his or her ballot for the great leader. Altogether, in these elections, 99.96 per cent of all eligible voters in the USSR

¹² In the 1946 elections, 106 out of 682 members of the Soviet of the Union and 148 out of 657 members of the Soviet of Nationalities were "nonparty Bolsheviks."

¹³ In the first (1937) elections to the Supreme Soviet under the new constitution, thirty-seven candidates were removed and others substituted during the elections.

¹⁴ According to Barrington Moore, Jr., *op. cit.*, 819, 699 voters (less than 1 per cent) voted against the approved candidates in the 1946 elections to the Supreme Soviet of the USSR. Only 0.3 per cent of the registered voters failed to vote. To strike out the candidate's name it is necessary to enter a curtained booth. "Loyal" voters simply take the ballot and hand it to the returning official who puts it in the box. This, of course, eliminates genuine secrecy and makes it possible for the officials to take note of those who are voting against the approved candidate.

participated, from walrus-hunting Eskimos and nomadic Mongols to Ukrainian farmers and Moscow intellectuals. Such unanimity is indeed astonishing!

Postelection control. Despite the thorough pre-election screening of candidates by the Communist party, a particular member may turn out to be unsatisfactory, especially in connection with executive duties. A member of the Politburo, Khrushchev, noted in 1946 that during the preceding eighteen months no less than 64 per cent of all chairmen of the executive committees of *county* soviets had been replaced by direct order of the local secretary of the Communist party. At the level of the Supreme Soviet of the USSR, changes in ministerial personnel are accomplished by action of the Supreme Soviet itself or at the behest of the party organization.

Personnel of the Supreme Soviet. Who are the successful candidates for the "highest organ of state power"? As we have seen, not all are actual members of the Communist party. Many are members of the Communist party hierarchy; many are members of the secret police; a number of lavishly decorated military men are usually elected. For the rest, the honor of election is frequently bestowed upon a Stakhanovite worker, that is, one who has succeeded in devising an increase in production in his factory, a woman who has contributed to the record of her collective farm, and so forth. The Supreme Soviet is a microcosm of the politically reliable people of the entire Soviet Union who are felt to deserve such an honor.

Its sessions. The Supreme Soviet, which meets frequently in joint session of the two chambers, resembles a mass meeting rather than a deliberative body. Appropriately, its members sit neither in an amphitheater as in France nor in the antiphonal arrangement of the Houses of Commons in Britain and the dominions. They occupy seats in a solid mass facing the stage as in a concert hall.

Debate, as we know it, is unknown. Speeches from the floor are made, but all bear the indications of careful preparation as in an arranged pageant. Criticism of particular high officials can and does occur. This, too, would appear to be prepared and approved beforehand by the high command of the party. When committee chairmen are critical of ministers, and in Russian style, their criticisms are usually sharp and harsh; the offending minister usually replies agreeing with the criticism and promising amends.

Officers and committees. Separately each chamber elects its chairman and two vice chairmen. When meeting in joint session the chairmen alternate in presiding. Each chamber then elects its permanent commissions (committees).¹⁵ In joint session the presidium is elected. Changes in the council of min-

¹⁵ These are few in number and are identical in each chamber. Four are appointed at each session: credentials, legislative motions, budget, and foreign affairs. Others are appointed occasionally, including investigating committees. The Legislative Motions Commission is concerned mainly with bill-drafting. Budget is the most important, and it is possible that criticisms originating here may have some effect upon details of policy.

isters are approved, and at the proper time new members are elected to the Supreme Court, a new procurator-general is elected, and so forth.

Legislation. As we shall see, although constitutionally the Supreme Soviet is the sole source of legislation, in actual fact a great deal of Soviet legislation is done elsewhere. Even for those bills that are handled by the Supreme Soviet, there is no time for careful examination either in committee or in debate on the floor. The Supreme Soviet meets twice a year but only for about one week at each session. All it does, for the most part, is to accept by acclamation and unanimously the measures placed before it by the ministers. When it criticizes and suggests changes there is every reason to believe, as noted above, that this is done by previous arrangement with the party leadership.

Its real function. Clearly the government of the Soviet Union could be carried on quite as well without the Supreme Soviet. Why then does it exist? There are probably several reasons. Primarily it is a mass meeting of chosen citizens from all over the union who will shortly return to their homes full of enthusiasm for the régime, its accomplishments, and its plans for the future. The members are representatives of the Soviet government among the voters rather than vice versa. Its sessions have some of the functions, and even the atmosphere, of the sales conferences of a capitalist company on the eve of a big selling campaign. Further, it provides a sounding board for the ministers who, through press reports, can catch the attention of everybody in defending their programs before the Supreme Soviet. It gives the members and, through them, the voters some sense of participation in government—a feeling that it is their own chosen government and not simply one imposed by the Communist party. This is rendered the more effective by the permitted criticism of selected ministers and other lesser officials of the administration. The Supreme Soviet, then, is one of the means whereby social tension may be dissipated through criticism directed against targets chosen by the party leadership and never against that leadership itself or its basic policies. If any real and effective opposition to the main policies were to arise it could never do so in the Supreme Soviet until previously developed in the Communist party. The following chapter will show the precautions taken against such a development.

The presidium. If the Supreme Soviet has little real authority for the reasons given above, how about the presidium—that Soviet device retained in the 1936 constitution? This is a small, compact body representative of all parts of the union, in constant session and possessing under the constitution highly important executive as well as legislative powers. As noted previously, it issues decrees having the force of law, appoints and removes military chiefs and diplomatic representatives, removes and appoints ministers except when the Supreme Soviet is in session, and so forth. Here again the party control is complete.

The ministry. As noted in our discussion of the constitution, the council of ministers is a very large body of some fifty members. Many of these ministers are technicians, chosen for their expert knowledge in a particular field and not as politicians or policy-makers. Insofar as the council of ministers is a policy-making body, that function is in the hands of the chairman (equivalent to a prime minister) and the nine vice chairmen. These are always members of the party presidium and form an interlocking directorate at the top between party and government.

Cosigning of decrees. Although the constitution assigns no governmental powers to the Communist party, it has been customary since 1931 for many important ministerial decrees to be signed not only by the chairman of the council of ministers but also by the secretary of the central committee of the Communist party of the USSR. Soviet legal writers explain that the latter signature is intended to indicate that the law is also important as a party "directive."¹⁶ Other minor decrees are issued simply by the minister concerned. As one would expect in a totalitarian state, the bulk of the regulations under which the individual citizen works and lives is in the form of such decrees.

THE FEDERAL SYSTEM

The USSR has a very complicated federalism designed to placate the national minorities within the union. Not only are there sixteen union republics, each representative of a large nationality group, but the largest one of these, the RSFSR, is itself a federation containing within it a number of "autonomous" republics, each based upon a small nationality. The RSFSR is a giant among pygmies, covering almost four-fifths of the total area of the USSR and containing over half the entire population. At its borders are ranged the other fifteen union republics.

Each union republic has its own version of the soviet flag, the right to conduct foreign relations, to adopt and amend its own constitution (subject to required compatibility with that of the USSR) and, as noted above, freely to secede from the Union. This latter provision is of course meaningless so long as all-union Communist control is effective.

Subdivisions of the union republics. Each union republic is subdivided into administrative units. The largest is the *Krai* (territory) which sometimes includes "autonomous regions" or "national areas." Both of these subdivisions are based upon nationalities. The RSFSR also contains a number of autonomous republics, based upon minor nationalities and roughly on a level with the

¹⁶ This does not seem to be applicable in some cases. For example, a decree of the council of ministers lowering prices on specified foods to go into effect March 1, 1949, was signed by Stalin as chairman of the council of ministers and by Malenkov as secretary of the central committee.

Krai in size. Another division for administrative purposes at about the same level as the *Krai*, although usually smaller and more populous, is the *Oblast* (region). Some Oblasts contain "national areas."

The meaning of soviet federalism. Despite the alleged "sovereignty" of the union republics as exemplified in their constitutional right to have separate diplomatic representation, their own armies, and even to secede from the union, the constitution also provides that the federal council of ministers can suspend decisions of the union republic cabinets and the presidium of the Supreme Soviet of the union can annul them.¹⁷ Law enforcement is entirely a federal matter. A procurator (prosecuting officer) is appointed for each republic by the procurator-general of the USSR, and the republic procurators appoint their subordinates who act in local courts. The prosecuting machinery of the judicial system is thus entirely outside the control of the republic authorities. The various sovereign rights mentioned above have never been exercised, with the easily explained exception of separate UN representation for Byelorussia and the Ukraine and some minor international agreements between republics and satellite countries on their borders. No republic has its own army. Finally, the republics have no financial autonomy. They do not have the taxing power except that they can make unimportant changes in tax rates within narrow limits set by the USSR. All tax revenues go to the USSR, which then allocates a sum to each republic. The republic's budget is then designed to fit the allocated sum.

Revived Russification. In the beginning, the federal principle and the abandonment of the hated tsarist Russification program was highly popular with the numerous non-Russian peoples in the Soviet Union and was a valuable aid in securing their adherence to the new order. But just as "democratic centralism" became less democratic and more central as time went on, so the federal idea faded before the necessity felt by the top Bolsheviks to consolidate all power in their own hands. Then, under Stalin, the Russification program was revived. In recent years Russian patriotism has enjoyed official approval, but from time to time local Communist officials have been reprimanded and sometimes purged for failure to suppress manifestations of non-Russian patriotism. A purge of this kind took place in the Ukraine in July, 1951. Communist parties everywhere in the union are supposed to stamp out local nationalism and do all they can to foster the universality of Russian culture. Russian has been made a compulsory second language in schools throughout the union and even in some of the satellite states.

Anti-Semitism. Despite the anti-racist doctrine of communism and its embodiment in constitutional provisions, observers report the persistence of a

¹⁷ Articles 69 and 49c.

certain amount of Great Russian arrogance. They note also that anti-Jewish attitudes in personal and official relationships may still be observed. A kind of Jewish reservation was set up in the Birobidjan (subsequently officially called the Jewish) autonomous region. This is located in the Far Eastern part of the RSFSR. It attracted a few thousand Jewish immigrants from other countries as well as many Jews from Soviet territories, particularly the Ukraine, where anti-Semitism is alleged to flourish. Altogether there are said to be about 25,000 Jews and 75,000 non-Jews in the area. The local leaders were mostly condemned as Trotskyites in the purges of the middle thirties and the area has remained very backward. Few additional immigrants have been attracted to the primitive, frontier existence of Birobidjan, although there are possibly more than 3,000,000 Jews in the USSR.¹⁸

Anti-Zionism. Zionism is of course condemned as "cosmopolitan" heresy. Following the establishment of an Israeli legation in Moscow in the fall of 1948, a spontaneous demonstration of Jews occurred at the Moscow synagogue. The occasion was the attendance of the Israeli legation staff at the Rosh Hashonah services. Thousands of Jews packed the street in front of the temple and many followed the Israelis back to their legation. The official response was quick and thorough. A number of alleged ringleaders were arrested and imprisoned, the two Yiddish presses, one a newspaper and the other a general publishing house, were raided and closed. The Jewish Anti-Fascist Committee was liquidated. All this was done by the police without trial or legal process. A campaign against Zionism was launched in the Soviet press. At times this was so violent that it was difficult to distinguish from anti-Semitism.¹⁹ All of this can be explained by the cultural isolationism so characteristic of the Soviet Union.²⁰ Evidently the much vaunted freedom of minority groups to develop along their own lines and with no suppression of native cultures is, to a considerable extent, a matter of window-dressing.

LOCAL GOVERNMENT

Local government areas. Local government areas include the *Rayon* (rural district or county) of which there are about 4,500 and the cities and towns, some 1,200 in number, as well as the smaller town-hamlets, hamlets, and villages, numbering over 70,000. These last three categories are governed by

¹⁸ Since 1950 many Soviet maps have not shown the Jewish region at all. It is still named, however, in the official list issued by the Supreme Soviet.

¹⁹ The *New York Times* and the *New York Herald-Tribune* contained dispatches and articles on this subject during 1949. See Solomon M. Schwartz, *The Jews in the Soviet Union* (Syracuse, N. Y., 1951). According to this author, the Soviet government actually connived at pogroms in the Caucasus in 1926, and following the purges of the mid-thirties there was discrimination against Jews in the government services and the armed forces. There followed the anti-Zionist purges of 1953 in the USSR and the satellite countries.

²⁰ Quite apart from a possible foreign policy reason: to please anti-Jewish Germans and Arabs.

the *Rayon* soviet, but the middle-sized towns fall under the *Oblast* soviet, while the large towns and cities are administered under the supervision of the Supreme Soviet of the republic.

Local government. The pattern of local government is identical with that of the union republics and the USSR. Every unit down to *Rayons* and cities and even villages, has its own soviet totaling some 83,200 local soviets for the entire union. These are large in size compared with our municipal councils, and are elected for two-year terms by the citizens of the area.²¹ Nomination and election follow the pattern already described: a single nominee with party approval will run in each election district and will receive the almost unanimous support of the entire electorate. There are exceptions to this and local candidates have been known to fail of election. At all events, the local soviet has little to do beyond picking its executive committee, which then proceeds to act virtually as the local government. This executive committee is responsible to the entire soviet according to law, but in political fact consists usually of local administrators who are not subject to practical control by anyone but the local leadership of the Communist party and the executive committee of the next higher soviet.

"Instructions" to local soviets. One of the democratic features of Soviet local government is a device like the factory "suggestion box" whereby approved groups file requests for action on some specific problem. These groups often combine in favor of some particular reform (more and better municipal housing, better laundry service, and so forth) and their instructions are supposed to serve as a guide to action by the soviet. There is little information on the effectiveness of such voters' instructions, but they may well have an effect upon the decisions of the executive council unless they conflict, as might happen, with the directives of the Communist party or a higher soviet executive.

The "sections" of the local soviets. All local soviets divide themselves into large sections, each concerned with a particular subject. A typical local soviet will have "permanent commissions" ("sections") dealing with the following matters: budget-finance, schools, public health, culture, agriculture, local industry, social insurance, trade and coöperatives, communal economy, improvements, and road building. The sections are supposed to check on the work being done in their assigned field and make constructive proposals about it. Any action taken on these proposals will be that of the executive committee or its presidium.

The sections are supposed to enlist the active participation in local government of large numbers of citizens. They contain not only members of the soviet

²¹ Moscow has a municipal soviet of over 1,000 members based on one member for each 3,000 of the population. Villages in the RSFSR have a member in the village soviet for each 100 to 250 inhabitants.

but also outsiders nominated by factories and various institutions which are invited to send delegates for part-time participation with the sections. This means that altogether there are over 2,000,000 persons in the USSR engaged in committee work of this kind.

No separation of powers. The separation of powers is a highly sophisticated governmental idea foreign to primitive political institutions such as the traditional Russian soviet. Furthermore, for reasons having to do with Marx's jaundiced view of the state, Marx and his disciples were not much interested in administration as a specialized governmental function. Accordingly, it is not surprising to discover that the executive committees or their presidiums, in big cities, consist mainly of the heads of the various city departments and divisions.²² There is nothing odd about this in Russian eyes, even though it permits legislative and administrative power to be held by the same officials.

Value of local government. In soviet local government we see several Marxist and Leninist ideas at work. The "sections" exemplify the early Marxist notion that administration could become everybody's job rather than that of a professional group. The large size of the soviets makes it possible for a great many citizens to feel that they are participating in their local government. The criticism permitted of local officials and administration, and the "instructions," provide a safety valve for general resentments. And all this is accomplished *without for a moment permitting any significant local independence of policies laid down in Moscow*. This control is trebly assured by the Communist party: first, by ensuring the election of well-screened candidates to the soviet; then by handpicking the executive committee or, in the case of metropolitan cities, its presidium; and finally by changing the personnel of the executive committee by direct party action if it seems desirable to do so. This makes for smooth cooperation between the local and the higher authorities, which in any case is compelled by the law permitting the next higher authority to override its inferiors, all the way up to the level of the Supreme Soviet of the USSR.

THE LAW AND JUDICIAL SYSTEM OF THE USSR

The revolutionary period. Law, as part of the economic superstructure of a class-dominated state, was expected to "wither away" along with that state as soon as the proletarian victory was complete. In the meantime law enforcement had necessarily to be left in the hands of the local soviets, as the tsarist courts had been dissolved in December, 1917. Revolutionary expediency was

²² It may be noted that departments hire their own labor force on a local basis, whereas divisions operate through trusts which are organized for the entire republic or in some cases for the entire union.

superior to any form of law. Nevertheless, the central Bolshevik authorities wanted to ensure the reasonably uniform enforcement of their decrees, and in November, 1918, Lenin called for "revolutionary legality."

The new legality. It soon became clear that law would have to be re-established if there was to be any orderly society, whether socialist or not. In 1922 a criminal code was published, and a revised penal code for the RSFSR in 1927 was quickly imitated in the other union republics.²³ The civil code of the RSFSR dates from 1923, and with many amendments is the basic civil law. This was based, actually, upon a prerevolutionary compilation by tsarist jurists and represents a continuation of Russian law despite Marxist theory as to its class origin.

Soviet jurisprudence. Shortly after the acceptance of the new constitution, Stalin removed the orthodox Marxist jurists from the law schools. The new authorities described law as the safeguard of the proletarian state against its enemies and a tool for the construction of socialist society. They still think of law as always an instrument of policy and have no place for any concept of "natural law" or law as a defense of the individual against the state. They have nevertheless accepted the restoration of procedural rules in the courts and the idea that defense counsel normally should be permitted.²⁴

Inheritance law. A good example of the gradual restoration of traditional rules is provided by Soviet inheritance law. Up to 1923 the principle of the *Communist Manifesto* was applied and all estates were inherited by the state. In 1923 a limited inheritance, up to 10,000 rubles, was allowed for a single estate. In 1926 the limitation on amount was removed but heirs were limited to spouse, children, grandchildren, and actual dependents. In case of intestacy all these received equal shares and children might not be disinherited. Finally, following the Second World War, secondary heirs (brothers and sisters) were permitted, and in the absence of relatives the testator may will his estate to anyone. Inheritance taxes were extremely high to begin with but were later abolished and replaced by a graduated filing fee which amounts only to 10 per cent on large estates.

The court system. As early as November, 1917, a decree on the court system was issued providing that judges should be flanked on the bench by laymen, "people's assessors," who would thus be able to make sure that a judicial attitude would not impede "revolutionary justice." This was in line with

²³ The basic idea is that the criminal is not responsible in any moral sense, but that "measures of social defense" must be taken against him. These measures include imprisonment in labor camps, ordinary imprisonment, capital punishment (from time to time this has been abolished and reinstated), and labor conscription. Crimes against the regime are treated severely, others more leniently.

²⁴ See John N. Hazard, "Soviet Law and its Assumptions" in F. S. C. Northrop, ed., *Ideological Differences and World Order* (New Haven, 1949).

the Marxist idea of general popular participation in all tasks of government and it has remained a feature of the Soviet judiciary.

At the bottom of the judicial hierarchy are the people's courts.²⁵ As in all Soviet courts of first instance, they consist of a judge and two assessors. Both judge and assessors are likely to be without special legal training.²⁶ The chief difference is that the judge holds office for the term of three years while the assessors are chosen from a panel and serve, as a rule, for only ten days a year. These courts, as one might suppose, are informal in their procedure and quick to reach a decision. Although bound, of course, by the higher courts, they are not concerned with their own precedents and render offhand justice in minor cases. Actually they handle a wide variety of cases, from a dispute over the possession of a room in an apartment to theft, burglary, and murder.

Superior courts are found in the regions, territories, autonomous republics, autonomous regions, and areas. These courts act in the first instance on serious crimes, that is, crimes against the state such as theft of public property or counterrevolutionary actions. In such cases the bench is occupied by the customary single judge and two assessors. Much of their work is appellate and cases may not only be appealed by one of the parties concerned but also reviewed at the request of the state attorney or the presiding judge of the republic's supreme court. In sitting as a court of appeal or cassation, the superior court bench is occupied by three judges. The judges and assessors of these courts are chosen for a five-year term by the soviet of their territory or other area.

Above these courts are the supreme courts of the union republics. Their work is similar to that of the regional courts but they presumably take original jurisdiction only in particularly important cases. The judges and assessors here are appointed for five years by the republic's supreme soviet.

Above all the ordinary courts is the Supreme Court of the USSR which again has both judges and assessors. This court no longer has any function of constitutional interpretation, a matter which is left to the presidium of the Supreme Soviet of the USSR. Its main job is to oversee the entire judicial system of the union, act as a court of cassation in important cases, and issue judicial rules of universal effect.

The procurator-general. The procurator-general of the USSR²⁷ is not

²⁵ If we except the "comradely courts" organized in a factory or apartment building to handle minor intragroup difficulties and having the power to reprimand or impose a very small fine.

²⁶ Even in the higher courts legal education still leaves much to be desired according to Soviet sources. As recently as 1947 the minister of justice said that many judges at the regional level had no more than secondary education. This does not apply to the supreme courts of the republics or the USSR.

²⁷ Formerly called the state attorney. The title was changed by an amendment to the constitution of February, 1947.

only the chief prosecutor before the Supreme Court but is in charge of all prosecuting officers throughout the USSR. At the lower levels these are appointed by the soviets, but their appointments are ratified by the procurator-general who himself appoints the procurators for the republics, territories, regions, autonomous republics, and autonomous regions. In addition the procurator-general is concerned with the entire court system, its relative efficiency and precision in executing the law, and the legal behavior of officialdom in general. He intervenes to bring to the attention of the Supreme Court decisions he thinks too lenient or too severe. Because of these functions and his supervision of prosecution throughout the entire union he is a very powerful official. His appointment is for seven years and is made nominally by the Supreme Soviet but, it may be assumed, is always approved beforehand by the high command of the party.

Judicial independence and justice in the courts. Judges in the USSR are removable before the expiration of their term of office by those who have chosen them. They may also be removed at the instance of the procurator and with the approval of the republic's supreme court. Under the circumstances judicial independence of political pressure is highly unlikely. From the point of view of Soviet jurisprudence, this is a desirable state of affairs. Broadly speaking, the accused Soviet citizen seems reasonably assured of a fair trial and a fair judgement in cases not involving crimes of any sort against the state. In case the crime is one of stealing public property the sentence may strike a Western observer as unduly severe.²⁸

The secret (political) police. Serious crimes of deliberate sabotage, espionage, and conspiracy against the régime are not usually handled by the ordinary prosecutors. Instead they are the concern of the secret police, known by a variety of names since first established by Lenin as the CHEKA. At present they are organized into two varieties: the uniformed and nonuniformed forces of the MVD (ministry of internal affairs) and the detectives of the MGB (ministry of state security).

Functions of the MVD. The MVD forces are numerous and their functions varied and extensive. The armed section amounts to a small army, complete with artillery and air arm. One is reminded of Hitler's Waffen SS. One reason for this considerable army is the MVD task of patrolling and guarding the more than 37,000 miles of frontier. Another aspect of their work is to see that the citizens of the USSR are properly identified and correctly equipped with the required documents: labor record, residence permit, military service record, and identification papers. In addition the MVD is in charge of "correctional

²⁸ An American journalist described in 1947 a visit to a people's court in which the convicted person was sentenced to a year at hard labor for stealing sixty-two newspapers worth about two dollars. The papers, however, were regarded as state property.

labor camps" or, as we would say, concentration camps. No one knows the population of these institutions but several millions at any rate are in them and are there employed, under MVD supervision, in construction, lumbering, railway building, highway maintenance, and other projects. Another function is the guidance, instruction, and supervision of foreign visitors through the Intourist Agency. The army is a special concern of the MVD. Poor morale or disaffection is reported through the political commissars attached to each military unit and appropriate action taken by the MVD. Universities are also watched carefully for signs of deviation from the prescribed party line on the part of faculty or students. Many nonuniformed personnel are employed for these spying activities. The MGB is more particularly concerned with external espionage and internal counterespionage, functions formerly performed also by the MVD.

The above-mentioned organizations are the direct successors of the dreaded CHEKA, OGPU, and NKVD. They have continued in the tradition of rule through terror. For a time, during the NEP period, terror was little used as a means of control. The death sentence was officially prohibited and the OGPU was forbidden to execute without trial. Oppositionists were sent to labor camps instead of firing squads. In 1927 the death penalty was reinstituted. Individual prisoners were executed not because of any specific act but in order to strike terror into the breasts of any possible enemies of the régime. The NKVD had its own tribunals which dealt out summary justice and which were not answerable to the ordinary courts. The midnight arrest, without warning, of a friend or colleague and his silent disappearance, followed sometimes by a curt notification of exile or execution, may well have cowed many a potential anti-Stalinist.

The party has always been careful to explain that no good Soviet citizen has anything to fear from the MVD. On the contrary, they are "the defenders of the revolution and the stalwart friends of the people." Occasionally, but very rarely, secret police themselves have been tried and executed for abuse of authority. But it is inconceivable that such a system could exist without abuses. In a state where the slightest expression of dissatisfaction with the régime or its basic philosophy is tantamount to treason and where the individual is free only to praise, a virtually unchecked political police, responsible only to their superiors, are bound to develop a callousness and disrespect for human rights and dignity and a willingness to use terrorism in the pursuit of their duties. Of course, terrorism has always been a planned part of their activities.

Practically nothing in detail has been published in Russia regarding the political police with the exception of writings about the original CHEKA. The

author of one such book²⁹ describes the methods of the CHEKA as follows: "The CHEKA either annihilates without a court by catching people at the scene of their crime or isolates them from society by imprisonment in concentration camps, or delivers them to a tribunal when a case requires detailed investigation and wide publicity. . . . The CHEKA has always tried to arrange its work . . . so that the recollection alone of the CHEKA would drive away any desire to sabotage, to assist in or organize plots. . . . The CHEKA is not a court, therefore all measures bear a purely administrative character . . . shooting (is) used not only when counterrevolutionaries are using open armed action but also . . . in cases when danger does not exist. . . . Good sense prompts one to protect himself from a knife-blow in the back. But this is impossible to accomplish if material evidence is sought in every case. . . . Counterrevolutionary activity has penetrated into all fields of soviet authority. The work of the CHEKA, therefore, must be universal—watching military life, productive work, popular education, all positive economic organizations, sanitation, fires, national communications, etc., etc."

It should be remembered that the above article was written in the civil war period, but the objectives and methods of the political police have not changed. The only change is in the extent of their activity, which varies according to the degree of security the régime appears to be enjoying at any moment. It is a fairly safe generalization that the ordinary Soviet citizen has little to fear from the secret police, providing, of course, that he does nothing foolish such as fraternizing with foreigners, but that officials of any eminence, the managerial class, and the intellectuals, writers, and artists are subject to constant observation and checking. Fear plays an important part in maintaining the appearance of unanimous enthusiasm and support for the régime. A by-product of this fear is the tendency of Soviet writers, no matter what their subject-matter may be, to insert fulsome praise of the dictatorship on almost every page. This may be regarded as an attempt at insurance against any suspicion of disloyalty. The simple fact is that no protection exists for the citizen suspected of hostility to the régime and that his "constitutional rights" are disregarded. Following the Kirov murder in 1935, a special decree was issued setting aside the right to have counsel and to appeal a conviction. Under this decree 117 persons were given secret trials and executed at once as a measure of "demonstrative terrorism."

Purges and mass trials. The most impressive examples of this technique have been in connection with the periodic purges, especially those of 1936-38 accompanied by public trial of many of the most important figures in the

²⁹ M. I. Latsis, *The Extraordinary Commission for Fighting Counter-Revolution (CHEKA)* (Moscow, 1921). The author is indebted to Professor Ellsworth Raymond for the translation, and for calling the passage to his attention.

Soviet Union. In August, 1936, a number of Bolsheviks, of whom the most prominent were Zinoviev and Kamenev, were charged with treasonable conspiracy and planning the assassination not only of Kirov but of Stalin and others. They were alleged to have done this under the direction of the exiled Trotsky. All those accused in open court confessed at great length. Many more, who apparently did not confess, did not appear in court and were executed or disposed of otherwise without publicity. Trotsky denied all the charges and produced proof that he could not have been present at some of the meetings he was asserted to have had with the confessed traitors. The truth or falsity of the confessions has never been decided completely. The trials have been denounced as total fabrications by refugees such as Alexander S. Barmine, former Soviet diplomat. However, the best opinion seems to be that there were conspiracies against Stalin. After all, the only possible opposition is necessarily conspiratorial. That members of the old Trotsky group still hoped in 1935 to oust Stalin and assume power themselves is not difficult to believe. Stalin and his loyal supporters were nervous and probably with good reason. The most serious and dangerous opponents would naturally be found within the Communist party itself. The purge of top Communists was accompanied by a purge of lesser fry among government officials, industrial managers, and the Communist party throughout the USSR. Neutral observers are prepared to believe that much of this was genuinely justified from the standpoint of the dictatorship.

During the war there was an increase of activity on the part of the NKVD. Regions under military attack had their ordinary criminal courts superseded by military courts including the military tribunals of the NKVD. After the war these special courts were retained in the conquered Baltic republics and in the Polish regions. Throughout the USSR, MVD courts, called "special boards," remain to deal out summary justice to opponents of the régime who may not have committed any actual crime.³⁰

• **General Works.** The student should be warned that much writing about the Soviet Union is biased one way or the other. It is difficult to preserve a completely neutral approach to such a complex and controversial subject. It is impossible to include everything necessary to give a three-dimensional picture of an evolving governmental and social system. Possibly the best and fairest of the general texts is Samuel N. Harper and Ronald Thompson, *Government of the Soviet Union* (2nd ed., New York, 1950). Another good recent textbook is that of Julian Towster, *Political Power in the USSR, 1917-1947* (New York, 1948). Michael T. Florinsky, *Toward an Understanding of the USSR* (New York, 1939) is definitely hostile, as is David J. Dallin, *The Real Soviet Russia* (New Haven, 1944). Leon

³⁰ These "boards," created by a decree of 1943, consist of representatives of the MVD, both USSR and republic, the local militia chief, and a representative of the procurator-general of the USSR.

Trotsky's embittered reaction to the régime is displayed in his *The Revolution Betrayed* (New York, 1937). Uncritical admiration is evident in the early description by Sidney and Beatrice Webb, *Soviet Communism: A New Civilization?* (2 vols., New York, 1936), and in the works of the "Red Dean," Hewlett Johnson, *The Soviet Power* (New York 1940), *The Secret of Soviet Strength* (New York, 1943), and *Soviet Russia since the War* (New York, 1947). An excellent but fragmentary study requiring some background on the part of the reader is Sir John Maynard, *Russia in Flux* (New York, 1948). Also interesting and suggestive is Edward Crankshaw, *Russia and the Russians* (New York, 1948).

The Soviets. An early study is H. N. Brailsford, *How the Soviets Work* (New York, 1927). See also the appropriate chapters in Julian Towster, *op. cit.*, and the following articles: Rose Somerville, "The New Soviet Elections," *American Quarterly on the Soviet Union*, October, 1938, 59-79; A Vasiliev, "The Permanent Committees of the Supreme Soviet of the U.S.S.R.," *American Review on the Soviet Union*, June, 1941, 62-70. For local government in the Soviet Union before World War II, see William Anderson, Editor, *Local Government in Europe* (New York, 1939).

Law in the USSR. The most considerable work in English is Rudolf Schlesinger, *Soviet Legal Theory: Its Social Background and Development* (New York, 1945). A translation of Vishinsky's official work is now available: *The Law of the Soviet State*, translated by Hugh W. Babb (New York, 1948). The same translator's *Soviet Legal Philosophy* (Cambridge, Mass., 1951) is an important book for students of Soviet law. See also Hans Kelsen, *The Communist Theory of Law* (New York, 1954); and Boris A. Constantinovsky, *Soviet Law in Action* (Edited by H. J. Berman, Cambridge, Mass., 1953). Excellent articles by John N. Hazard include "Soviet Law: An Introduction," *Columbia Law Rev.* (December, 1936) 1236-66, and "Law, the Individual and Property in the U.S.S.R.," *American Sociological Rev.* (June, 1944) 250-56. See also N. Semenov, "Soviet Courts and Punishment Policy" (Institute for the Study of the History and Institutions of the U.S.S.R., Munich, 1952).

The Strategy of Terror. Victor Kravchenko, *I Chose Freedom* (New York, 1946), contains information on this subject, as does W. G. Krivitsky, *In Stalin's Secret Service* (New York, 1939). The use of forced labor under MVD supervision is described in D. J. Dallin and B. Nicolaevsky, *Forced Labor in Soviet Russia* (New York, 1947), and in Albert K. Herling, *The Soviet Slave Empire* (New York, 1951). A fascinating fictional account of the confession-extracting techniques of the political police is found in a novel by an ex-Communist, Arthur Koestler, *Darkness at Noon* (New York, 1946). A study of this subject based upon a number of personal experiences is F. Beck and W. Godin, translated by Eric Mossbacher and David Porter, *Russian Purge and the Extraction of Confession* (New York, 1951).

Articles and Periodicals. The articles by John N. Hazard are especially noteworthy. See his "The Soviet Constitution: An Introduction," *Lawyers' Guild Review* (November-December, 1943) 27-42; "Federal Organization of the U.S.S.R.," *Russian Review* (Spring, 1944) 21-29; "Federalism in the U.S.S.R.," *State Government* (June, 1945) 92-92; and "Constitutional Problems in the U.S.S.R.," in J. K. Pollock, *Change and Crisis in European Government* (New York, 1947). The Soviet Embassy in Washington, D.C., publishes a monthly,

USSR Information Bulletin which, while obviously propaganda, contains much interesting information and is sometimes more revealing than the editors realize. Most useful to the serious student are the periodical issues of translations of Soviet press items contained in *Soviet Press Translations*, issued until March, 1953, by the Far Eastern and Russian Institute of the University of Washington, Seattle, Washington, and in *Current Digest of the Soviet Press*, issued at 1219 Sixteenth Street, N. W., Washington, D. C.

Handbooks. There are two useful handbooks: P. Malevsky-Malevitch, *Russia-U.S.S.R., A Complete Handbook* (New York, 1953), and E. J. Simmons, ed., *U.S.S.R.: A Concise Handbook* (Ithaca, N.Y., 1947).

CHAPTER XLI

The Communist Party of the USSR

The Communist Party of the Soviet Union is a voluntary militant union of Communists holding the same views, formed of people of the working class, the working peasantry and the working intelligentsia.—Article 1 of the revised [1952] Statutes of the Communist Party of the Soviet Union

The Party is a thong . . . it often cuts into my flesh, but I can't live without it . . . I need someone to give me orders. I must feel another shoulder next to mine.—A character in the Russian play, "Bread."

Throughout the preceding description of the Soviet government and its operations, the Communist party has been mentioned constantly as the directing group in all activities of this totalitarian régime. It is time to examine the party itself, its internal organization, and the methods used to ensure its control by the dictatorship.

The idea of the party. It will be recalled that Lenin had insisted upon a party consisting of a hard core of disciplined revolutionaries as the only practical organization for conducting a successful revolution. He built such a party, and in large part because of its excellent discipline and the instant coördination of effort made possible by this discipline, it was able to triumph over the much more numerous Social Revolutionary and Anarchist parties who might have been considered more logical heirs of a Russian revolution. There was nothing democratic about this Communist party except its proclaimed goals. Lenin had hopes, it would seem, that a successful revolution would soon eliminate the need for such a party and that a measure of genuine mass democracy might soon be achieved. At this stage, the Communists would serve as inspirational models and guides rather than dictators. As we have seen, these hopes were quickly dashed. The end of the civil war period saw even more rigid discipline imposed upon the Communist party, and it continued to govern without tolerat-

ing any outside opposition. At the same time, Lenin's concept of the party became the official myth. It was alleged to be a brotherhood, bound together not by fear and power, but by a devotion to the mass of humanity. The official characteristic of the Communist was that he was willing to work harder, to accept less, and to devote more of his effort to the commonweal than were ordinary citizens. The analogy to a religious order has often been made. Nor was this comparison entirely without foundation. Neutral observers have commented on the zeal and total devotion to the job of many Russian Communists. Nevertheless these devoted Communists were seldom free to collaborate in the process of decision-making. In joining the party, in effect, they took a triple vow of poverty, obedience, and the eschewing of all religion except Marxism as interpreted by the party chiefs.

Democratic centralism. Early in the history of his rise to leadership and long before the revolution, Lenin introduced the principle of "democratic centralism" as the correct method of arriving at decisions binding upon the entire party. This was supposed to mean the choice of decisions by free discussion among the mass of party members followed by completely united and disciplined action in carrying out the decision once it had been made. At times, Lenin emphasized the democratic aspect of this principle and appealed from his colleagues on the central committee to the general party membership, as did his opponents. When he had managed to secure unquestioned control of the central committee, he tended to emphasize the importance of centralism, that is, control from above.

Why intraparty democracy did not develop. It would have been impossible for democracy to develop in Russia during the civil war period. The Bolsheviks and their opponents were equally intolerant and addicted to violence as a political weapon. Within the Communist party the continued need for disciplined and united action also militated against free discussion. Furthermore, there was no tradition of democratic compromise either in Russian governmental history or in Communist party history. Even when the fighting was over, the village soviets failed to accept Communist leadership in many cases and did not cooperate with the Bolshevik government. Lenin and his colleagues naturally decided upon a renewed and more efficient Communist dictatorship. Opposition could not be tolerated. Accordingly, in December, 1920, the central committee of the Communist party announced new soviet elections without any opposition permitted. All soviets would have to adhere to the policies of the central committee. It is significant that this same period saw a vast expansion of the political police (then called OGPU). Thenceforward the soviets, that is, the official government, ceased to be a likely arena for the development of any independent political movement.

The principle of democratic centralism, mentioned above, has continued to be the official description of intraparty structure and control. The party statutes have not been changed in any fundamental way since they were adopted in 1919.¹ Nevertheless, Stalin remained in unchallenged supremacy from about 1925 to his death in 1953. Up to 1925 moot questions were discussed throughout the party upon several occasions at the explicit request of the central committee; and even though the "official" view of the correct solution was invariably adopted, the free expression of opposing views was permitted and aired in the party press. Starting in 1927, the opposition was given no chance to use the press and the rank and file of the party were able to read Stalin's opinion only. All that remained of democratic centralism was the right to criticize subordinates for their inefficiency, useful as permitting self-assertion and useful, too, in providing scapegoats for mistakes of the top administration. Henceforward Stalin described the party as "monolithic" and its basic policies as dogmas, criticism of which is heretical.

Democratic centralism again received verbal homage in the 1952 statutes as the guiding principle of party structure. Stress is placed upon the importance of having real discussion throughout the party of important decisions of party and government (Article 27). This declaration is immediately followed (Article 28) by a caution that this freedom must not be used to cause dissension or the destruction of party unity. Broad debates (concerning policies) are to be allowed *only* if considered essential by at least several party organizations at the provincial or republic level or if required by the central committee. This limitation is to prevent "misuse of internal party democracy by anti-Party elements" and means, really, that any such debate has to be approved beforehand by the dictatorship.

Formal party structure. At the base of the party are the "primary organizations," formerly known as "cells," which vary in membership from a dozen persons to a thousand or more. Many of these are organized among the workmen in a factory or other economic or public institution, on collective farms and the like, but also in towns and villages. By 1947 there were some 6,300,000 party members, according to Malenkov. However, the inclusion of the Young Communist League (Komsomols) and other subordinate organizations would increase this figure to some 32,000,000, about one in six of the entire population. During the Second World War an intensive effort was made to recruit combat soldiers into the party, and it is claimed that this drive almost doubled the membership. Because of the farm origin of many soldiers an-

¹ An English translation of the party statutes, amended to 1939, may be read in *The American Quarterly on the Soviet Union* (April, 1939), 59 ff. A late revision (October, 1952) is available in *The Current Digest of the Soviet Press*, IV, 48 (January 10, 1953), 10-14.

other result must have been to increase the rural representation, although the party is still predominantly urban in membership.² Obviously the party is no longer a group of revolutionary leaders. It is a mass organization and attempts to recruit the best citizens, chiefly, perhaps, to give them a sense of participation in the dictatorship and to give it genuine mass support.³

Originally, admission to the party was not an easy matter. A 1943 rule required a probationary period of from one to three years and the sponsorship of the candidate by three to five members who had belonged to the party for from five to ten years. During the probationary period the candidate had to pay dues but had only a consultative vote at meetings. In fact, following the Kirov assassination and subsequent purges, no new members were admitted from the winter of 1934 until near the end of 1936. In 1939 the eighteenth party congress softened the rules to permit a candidate to enter with the endorsement of three party members of three years' standing who have known the candidate well for at least one year. Former members of other political parties still require the approval of the central committee, and other candidates the approval of the primary organ and the *rayon* or city committee. All candidates must sign a statement that they agree with the party program. At the same time (1939) a "bill of rights" was given to the membership. According to this, they are entitled to criticize other members at party meetings, vote in party elections by secret ballot, hold office, be given a hearing if under investigation, and communicate with higher party agencies including the central committee itself.

Once accepted, a member is on probation for a year during which time he is required to improve his familiarity with Leninist-Stalinist doctrine and cheerfully perform any assigned tasks. At the end of the year he is admitted or rejected by vote of the primary organization after his candidacy has been approved by the district or city committee.

Primary organ democracy. The primary organ, if the membership exceeds fifteen, elects annually an executive committee of three to seven members.⁴ These elections are not always decided in advance, and sometimes officers will meet sharp criticism from members and fail of re-election. Nevertheless, as noted below, there is a rather constant tendency to accept higher advice in the matter of officers and for actual or virtual appointment to replace free elections.

Primary organ functions. The work of a primary organ is to be the eyes and ears of the party at ground level. Active Communists are supposed

² The secretary of the Ukrainian CP (Khrushchev) reported in 1948 that fewer than half the collective farms in his republic had Communist organizations.

³ Again one is reminded of the Nazi and Fascist parties.

⁴ A primary organization with 15 to 100 members has a committee of 3 to 5 persons; one with more than 100 members has a committee of 5 to 7 persons. Smaller primary groups have a single secretary.

to interest themselves in every kind of activity and to see that party directives and policies are faithfully executed.⁵ In all economic, cultural, and other organizations the party members are required to have caucus meetings and decide upon united action in making decisions. Although very often a minority of the whole, this united front gives them a controlling voice in almost all cases because there is never an organized opposition. If they are in doubt as to the proper attitude to take on a question they can turn to higher party authorities for advice.

Youth organizations. To supply a properly indoctrinated youth from which the party will be recruited in large measure there are three organizations. The first of these is the "Little Octobrists," which accepts children between the ages of eight and eleven. Five members are organized as a "link," with a "Pioneer" as leader. Several links are grouped together, with an older youth who is a member of the Komsomols as group leader. At this stage little training beyond the group games and sports and reverence for the dictator is attempted.

When a child has outgrown the Little Octobrists, he or she is ready for the Pioneers, who accept members between ten and sixteen years of age. As with the Little Octobrists, there are no requirements except age and any child may join, although a candidate may be dropped within two months if he fails to come up to group standards of intelligence and effort. Pioneers are organized into brigades, with a Komsomol as brigade leader. Their purpose is to instil a "socialist attitude" toward work, study, and other activities. They might be described as the Communist equivalent of our Boy and Girl Scouts.

The All-Union Leninist Communist League of Youth (Komsomols) is for young men and women between the ages of fifteen and twenty-six. This is the most important of the three organizations, numbering some 9,000,000 members at the end of the second World War.

The Komsomols are virtually junior members of the Communist party. An applicant for membership must be recommended by two Komsomols or by one member of the party itself. Unworthy members may be dropped during the period of candidacy, and this dismissal is likely to include those who recommended him. Even after the age of twenty-six, members may remain as non-voting advisers, unless elected to higher organs of the society, in which case they retain voting rights. If and when a Komsomol is elected to membership in the Communist party, he ceases to be a member of the junior organization unless he holds an executive position in the league.

One purpose of the Komsomols is to teach party discipline. Discussion may

⁵ A distinction is drawn between the *Activ*, composed of militant Communists who spend much time on party work, and others who, because of the nature of their jobs or for other good reasons, cannot be expected to do so.

precede decision, but, once made, the decision binds all alike. The Komsomols, too, provide schooling in the ideals of the party, Marxism-Leninism-Stalinism, the evils of religion and superstition, the dangers of (other people's) nationalism, and so forth.⁶ They are expected to donate their skill and strength to public projects, housing, road building, and the like. They are supposed to be exemplary students, sober, hard-working, and clean. Quite possibly they have helped to improve the moral tone of Soviet society. More and more they form the human base from which the party itself is recruited, and ambitious youths know that their reputation in the Komsomols is a real factor in assuring a party membership which opens the possibility of important position or high office.

The Komsomols are organized very much as is the party itself with primary cells in factories, schools, villages, collective farms, and so forth. These elect district and city committees and these, in turn, elect regional and republic committees which send delegates to the all-union conference every two years. At all levels the Komsomols work closely with their opposite numbers in the party proper and their all-union central committee is represented in and directly responsible to the central committee of the party.

The Communist party today. No longer called upon to engage in conspiracy and revolution, the Communist party of the USSR has become the aristocracy of the state. While relatively important positions are available to non-Communists, especially skilled technicians, the most important posts not only in government but in industry, education, science, and every other activity are more and more available to party members only. To some extent this has led to a diminution in the devotion and fanaticism of the party membership. Just as Hitler's party contained many "*Muss-Nazis*," so the ambitious and cynical Soviet youth may pretend a devotion to Communist ideals which he does not feel in order to make his way in politics or in almost any field of endeavor. Past purges indicate that despite all precautions many time-servers and even anti-Stalinist conspirators managed to enter the party. The best opinion would seem to be that a very large portion of the party has been neither anti-Stalinist nor fanatically devoted to his leadership but loyal to the party because it presents the chief opportunity for personal advancement. An indirect proof of these statements is contained in the constant exhortation by high officials to greater zeal among the rank and file. They are urged to be more than formal Communists and charged with failure to exhibit vigilance and militancy in seeing that party directives are carried out.⁷

⁶ The party also maintains a number of special academies where chosen individuals are given specialized training for a particular job such as agitation and propaganda, intraparty administration, and the like.

⁷ See, for example, N. S. Khrushchev's report to the nineteenth party congress, available in *Soviet News*, September 6, 1952, and also in *Soviet Studies*, IV, 3 (January, 1953), pp. 310 ff.

Class in the Soviet Union. The question is raised from time to time as to whether or not a class system is developing in the USSR. All revolutions represent an overturn and destruction of the old ruling class, and history records no case where the successful revolutionaries have not in time developed a new élite, although the new ruling class may be based on a different principle from that of the old one. This would appear to be taking place in the USSR.

A ruling class is distinguished by the enjoyment of higher than average income, the possession of certain privileges, and a tendency for these and the power they represent to become hereditary. As such a class becomes more firmly established, it displays a tendency toward endogamy, social exclusiveness, and develops speech habits and dress tending to differentiate it from the masses.

All these have been observed in the USSR, even though the revolution took place a mere generation ago. The original prejudice in favor of proletarian origin and the almost mystical attitude toward the common man have given way to an admission that the intelligentsia, too, have an important part to play. It could hardly be otherwise. The old adage, "knowledge is power," applies in the USSR as elsewhere. The intelligentsia, according to Stalin, is not a class but a *stratum*. Whatever word be used, the fact remains that the intelligentsia enjoy higher than average income, that their children have better educational opportunities than those of the worker (for higher education is not free), and that they have a tendency to mix socially with their own kind, intermarry, and help their relatives to get good jobs.⁸ No longer is it fashionable, even for Bolshevik politicians, to wear a workman's cap. Differentials in dress and speech are observable between the educated and the working class. The army, which at the time of the revolution elected its officers and removed insignia of rank, was drastically reformed. Not only were officers' insignia restored together with pay differentials as great as those in capitalist states, but fraternization between officers and men was strictly forbidden. The old "vow of poverty" of the Communist party was relaxed in 1929 to permit those holding certain positions to accept higher incomes. It was repudiated completely by Stalin in 1931. Entrance to this ruling class is always open to those with enterprise or talent, as it is in other countries, but inevitably it is easier for those born into it to remain there than for outsiders to enter. More and more the typical Communist is a bureaucrat rather than a workman. It is significant that the party is not now called "the vanguard of the working class" but "the best of the working class, peasantry, and intelligentsia."

⁸ "Self-criticism" in *Krokodil*, the Soviet comic paper, is sometimes directed at this. For example, a cartoon shows two undergraduates in conversation. When asked what he will do after graduation, one replies, "Stay here in Moscow with Uncle at the ministry, of course."

COMMUNIST PARTY ORGANIZATION

The hierarchy of the party. Each primary party organ or "cell," as it used to be called, not only elects its own executive committee, or executive secretary, if it has few members, but also elects representatives to the city conference or the district conference (for rural organs). These, in turn, elect their own committees as well as representatives to the area, regional or territorial conferences. The latter elect representatives to the party congress of the republic, which, in turn, elects its representatives to the party congress of the Soviet Union. This final representative body, four times removed from the party rank and file, is formally the supreme party authority. Under the old rules it was supposed to meet every three years or oftener. Actually it met much less frequently. The new rules call for a meeting at least every four years. The congress hears the reports of its central committee, adopts the party statutes, and elects the central committee.

The central committee. This body, now supposed to meet at least twice a year, is formally the supreme party organ between meetings of the congress. It directs the work of both party and government as well as every kind of public organization through the Communist groups within them.⁹ According to Article 36 of the party statutes, it directs the whole work of the party, represents the party vis-à-vis other organizations, appoints the editors of the national press, confirms the appointment of editorial boards of important local papers, "organizes and directs undertakings of social significance," and so forth. Article 37 gives it the right to create "political sections" and assign special agents to key points in the economy when needed, superseding the regular party organs.

Formerly the central committee was supposed, annually or oftener, to convene a party conference as a kind of interim congress. This body was made up of party secretaries down to the regional level and a few other prominent Communists. There is no mention of the conference in the new statutes.

The bureaus. The central committee operated through four bureaus (executive committees): the political bureau (Politburo), concerned with general policies; the organization bureau (Orgburo), overseeing party membership and organization; the central control commission, concerned chiefly with party discipline; and the secretariat, also concerned with party discipline and organization and particularly with the party secretaries at all levels.

The 1952 changes. The most important changes in the 1952 rules had to

⁹ It is through the central committee that the regimentation of writers, scientists, and artists is effected. For example, it ordered a reorganization of the Union of Soviet Writers in 1946 which body then attacked writers allegedly guilty of local patriotism, "cosmopolitanism," or other deviations from correct thinking. Through directives to the All-Union Academy of Agricultural Sciences, it supported T. D. Lysenko in his debate with the Mendelian biologists.

do with these bureaus. The new statutes provided a somewhat simplified top structure. The Politburo and Orgburo were abolished and the former replaced by a new organ, the presidium of the central committee. The presidium was so named, according to Khrushchev, because this is a more suitable title than Politburo to indicate the general nature of its work and its function of directing the central committee. The secretariat and party control committee¹⁰ were not only retained but given increased authority. The secretariat now has the power to review current problems and check the fulfillment of party directives, thus absorbing some Orgburo functions. The control commission formerly had committees to represent it in the localities, but these were elected locally although responsible to the commission. These representatives are now appointed directly by the control committee and are entirely independent of the local party organs and secretaries. Their work is to catch any cases of disobedience to the party including any illegal or unseemly behavior on the part of members and to hear appeals against expulsion from the party at all stages down to the regional organizations. They are stationed in the republics, provinces, territories, and regions. The secretariat continues to supervise its parallel set of guardians, the party secretaries, all the way down to the primary organizations. These, although elected by the local bodies, must be approved by the party organization at the next higher level and are at all times subject to removal by the Secretariat.

Effect of the changes. It would be easy to overemphasize the significance of these changes in formal party structure. Their total effect is to make the dictatorship tighter and more efficient by further centralizing and strengthening the lines of control. The presidium is not, as was the Politburo in form, a mere subcommittee of the central committee, but a select group of party leaders organized to direct the central committee. This brings theory into closer relationship with actuality. But the presidium cannot be more powerful in fact than its all-powerful predecessor.

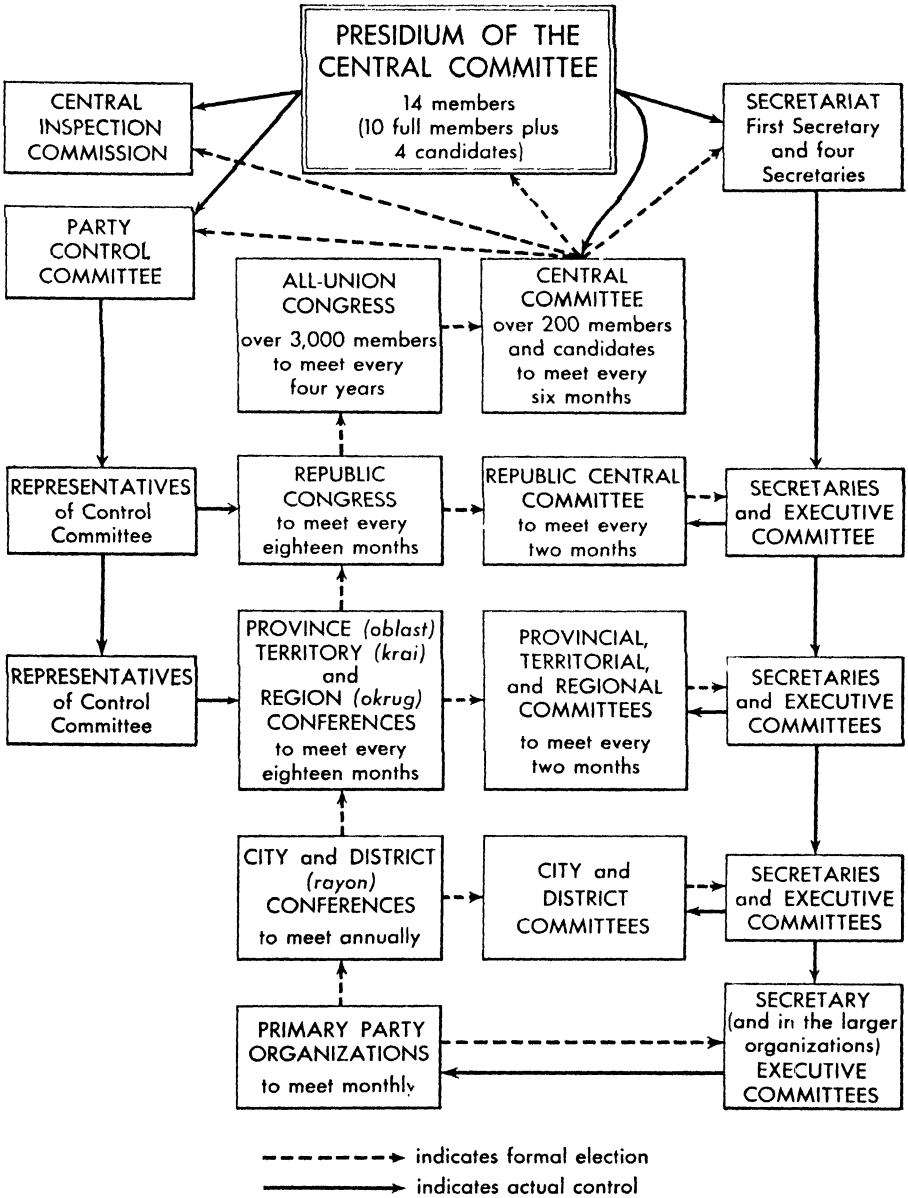
THE CONTROL AND MANAGEMENT OF THE COMMUNIST PARTY

Once again we must observe the tendency found in Soviet government organs for the executive to absorb the legislative powers, and for an ever-smaller inner executive to replace in actual power the ostensible executive. A glance at the accompanying chart shows a party organization resembling in some respects the pre-1936 soviet system. A very large number of primary party meetings elect a district or city conference and so forth until the pyramid is capped by a single all-union congress. It should be observed further

¹⁰ Formerly "party control commission." The change to "committee" indicates greater importance.

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that these meetings, at all levels, are not continuous or even as frequent as called for in the rules and that much power must, of necessity, fall into the hands of the executive committees and secretaries. Finally, when we are told that the all-union congress actually met only three times in eighteen years—in 1934, 1939, and 1952—we must assume that the control mechanism of the party must be looked for elsewhere than in the hierarchy of elected conferences and congresses. Examination of the proceedings of the last three all-union congresses would confirm this assumption, for at none was there any searching debate on policy.¹¹ The Supreme Soviet seems partly to have replaced the party congress as the chosen location for the announcement of important decisions by party leaders, insofar as these are announced at all.

Despite party rules, it would appear that many committees and especially secretaries at the territorial, regional, and republic level have been appointed by coöption rather than elected by the party conference or congress. An even larger number of coöptions to execute positions is found at the district and city level.¹² Even when an election is held, it is managed by the secretaries, who agree beforehand upon a slate and almost always have their way with the meeting. Stalin was accused by Trotsky during their struggle for power of having packed the party with his followers. This technique of ensuring control seems never to have been abandoned. At regular intervals party leaders talk about dropping the appointment procedures and using free elections at all levels of the party structure. At the same time the secretariat and control committee exist to make sure that no opposition can arise.

The location of control. Evidently over-all control is not located even in the central committee with its large membership and infrequent meetings but rather in the top policy body, now called the presidium. The control committee and secretariat are important also, as indicated not only by their functions but also by the fact that they share an interlocking directorate with the presidium.¹³ All observers agree that the politburo and its successor, the presidium, is the source of all important policies of both party and government. Al-

¹¹ The typical speech from the floor at the 1952 congress consisted of some boasting about local accomplishments followed by self-criticism for failure to do better, a mention of local shortcomings on the "ideological front," and a peroration in praise of Stalin. Examples of these speeches as reported in *Pravda* may be read in *The Current Digest of the Soviet Press*, IV, 44-50 (December 13, 1952, to January 24, 1953).

¹² According to Zhdanov, quoted in Barrington Moore, Jr., *Soviet Politics—the Dilemma of Power* (Cambridge, Mass., 1950). Judging by speeches made in connection with the nineteenth congress in 1952, this situation had not changed materially. It should be noted that the local executives are in a key position to control the primary organizations. They distribute the party directives and are in constant touch with the primary secretaries who "boss" the primary organizations.

¹³ According to *Pravda*, March, 1946, Stalin, Malenkov, and Zhdanov were members of the Politburo, the Orgburo, and the secretariat; A. A. Kuznetsov and G. M. Popov were in both Orgburo and secretariat; Bulganin was a "candidate" member of the Politburo and a full member of the Orgburo.

though decrees are always issued in the name of the central committee, this appears to be a formal approval of decisions arrived at elsewhere. In theory, of course, the central committee elects and may replace the members of the presidium and the other central bureaus. However, during the purge of the thirties, of the seventy-one members of the central committee elected in 1934, nine were executed, twelve were officially described as "enemies of the people" (and probably executed), and twenty-four simply disappeared from sight, a total of forty-five.¹⁴ The proof seems overwhelming that the central committee is a creature of the party leadership rather than the other way around.

Was Stalin a dictator? Granting that Politburo and its successor the presidium have been the chief governing body, the question remains as to whether the USSR was a dictatorship or an oligarchy in the Stalin period. Possibly the answer to this question is not very important, as the autocratic nature of the regime is incontestable in any event. So far as is known, Stalin never had to overcome public objection to his decisions after he had destroyed Trotsky's "Left Opposition" and the "Right Opposition" of Bukharin. There is some evidence that he made important policy decisions at times without consulting anyone. On the other hand, for all we know, there may have been lively arguments in the closed meetings of the Politburo. If so, no echo of disagreement was allowed to reach the public. From time to time Stalin would modestly disclaim any position more exalted than that of one of several party leaders and the obedient servant of the central committee. At the same time an enormous propaganda apparatus was employed constantly in building and reinforcing the myth of his universal popularity and omniscience.¹⁵ He was hailed as infallibly right in his decisions and the supreme philosopher and authority in every field.

The 1953 changes. The 1952 party arrangements were soon to be revised again. Stalin's death, announced March 5, 1953, meant the succession of a new leadership in party and state which could hope at first to receive only a part of the unquestioning obedience rendered Stalin by the people of the Soviet Union and by the Communist parties abroad. The first task of the new leadership was to consolidate its position at home and avoid the explosive possibilities always inherent in the political vacuum created by the death of a dictator. No new leader, however brilliant and ruthless, could hope to step into Stalin's place at once even if he had no ambitious rivals to defeat. It was necessary for the party leaders to present a united front to the USSR and the world, however incom-

¹⁴ As noted in Barrington Moore, Jr., *see above*.

¹⁵ For example, his seventeenth birthday anniversary in 1949 was the occasion of an announcement that he is the world's most widely read author, the circulation of his works in the USSR alone having reached 539,000,000 copies in 10 languages. The state art publishing house marked the occasion by printing 2,000,000 Stalin posters and another 1,000,000 portraits of Stalin. The state music publishers issued forty-five different songs in his honor, and so forth.

compatible their several ambitions might be. An unprecedented session of the central committee, its presidium, and the council of ministers met immediately upon the public news of Stalin's death and appointed to the post of prime minister Georgi Malenkov, secretary-general of the party.

The new presidium. At the same time the new leadership consolidated its position by appointing a new presidium of the central committee to replace the thirty-six-member body created in 1952. It was announced that this large presidium had proved unwieldy. The new presidium has only fourteen members—ten full members and four alternates or candidate-members. This is about the size of the old Politburo. The change enabled the new leaders to depose those whose loyalty might be uncertain and also to concentrate power in fewer hands. Students of Soviet affairs believed the chief oligarchs were Malenkov (prime minister); Khrushchev (secretary-general of the party); Beria (first vice premier and minister of the interior, including the former ministry of state security); Molotov (first vice premier and minister of foreign affairs); and Bulganin (first vice premier and minister of defense).¹⁶

The Secretariat. The secretary-general has always been a commanding figure in the party hierarchy with the most direct control over subordinate party organs. It was Stalin's tenure of this post that enabled him to pack the party with his own men and defeat the more brilliant and celebrated Trotsky. For long, Stalin would trust no one else in this position and retained it himself despite his occupancy of the premiership. Malenkov's resignation as secretary-general as soon as he became prime minister, whether voluntary or forced, and the appointment of the Ukrainian Khrushchev to this key post underline the oligarchic nature of the new régime. At the same time the secretariat was reduced in personnel, there being now only four instead of nine secretaries under the secretary-general.

The 1953 oligarchy: prelude to a dictatorship? One is reminded of the events that followed Lenin's death. For a time the Soviet Union was ruled by a triumvirate consisting of Stalin, Kamenev, and Zinoviev. This lasted until Stalin was able to make himself dictator. Whether Malenkov or another of the party leaders will be able to emulate Stalin remains to be seen. There is inferential evidence that a struggle for ascendancy among the Kremlin chiefs has been unremitting since Stalin's death. Some of the changes in policy and per-

¹⁶ In addition to the "Big Five," the first presidium under the new leadership consisted of the following: Kaganovich (first vice premier); Mikoyan (vice premier and minister of trade); Voroshilov (chairman of the presidium of the Supreme Soviet, a figurehead position); Pervukhin (minister of electric power and industry); Saburov (minister of machine industry); Shvernik (chairman of the trades union council); Ponomarenko (long Malenkov's assistant and now minister of culture, including educational and propaganda agencies); Melnikov (representing the Ukraine); and Bagirov (representing the Caucasus). The last four were candidate-members.

It will be noted that there is an interlocking directorate between the presidium and the policy-making posts in the council of ministers.

sonnel hinted at successful opposition to Malenkov. One such was the dismissal of Malenkov's protégé, presidium member Leonid G. Melnikov, from his post as first secretary of the Ukrainian Communist party in June, 1953. The way in which Lavrenti P. Beria was able to emerge unscathed from the scandal of the doctors' trials and make a scapegoat out of Ignatiev, a Malenkov man, argued that Beria might be on the way to supreme power. But the Malenkov forces were able to turn the tables with dramatic abruptness. On July 10, 1953, Beria's arrest was announced and he was denounced as criminal and arch-traitor, as is customary with fallen Soviet idols. Subsequently a number of high party functionaries were purged, especially in the interior ministries, and including a member of the presidium, M. D. Bagirov, a Beria protégé. Beria's police remained silent and apparently loyal to the government while the army chiefs announced their complete approval of the arrest.

It may be assumed that there will be no build-up of Malenkov or anyone else in the Stalin manner until all internecine warfare is over and unquestioned control of the presidium assured the new dictator. Important decisions are not credited to any individual but to the central committee. In the meantime Stalin is being allowed to fade into the background. There has been a sharp drop in references to his name in the press all over the Soviet Union.

Concluding observations: recapitulation. Starting with what may have been a sincere intention to establish a genuine "proletarian" democracy, Lenin was thwarted by the violent opposition he encountered and by the ignorance and incapacity of the masses. His revolutionary élite was then used to support a party dictatorship with a rapidly diminishing amount of intraparty democracy. Under Stalin the party became "monolithic," controlled absolutely from above and used as the dictator's agent in a totalitarian regime. Lenin's "democratic centralism" continued to receive lip service but became in fact no more than the encouragement of "self-criticism," a device to divert hostility from the party high command to the lesser officials and bureaucrats and at the same time give the ordinary citizen a sense of freedom and participation in the government.¹⁷ Stalin's successors have made no change in the relationship of party and state. Their changes in formal structure in both have simply drawn attention to the very small number of persons who control the Soviet Union.

THE INTERNATIONAL ASPECTS OF SOVIET COMMUNISM

Perhaps our recent concentration upon internal aspects of the Soviet Union has made it necessary to remind the reader that Marxist socialism was, in its origins and development, an international movement, and that Lenin had

¹⁷ This argument parallels that of John Barrington Moore, Jr. Readers of Mr. Moore's penetrating study will be aware of the debt owed to him by the authors in the chapters on the USSR.

hoped that the Russian Revolution would create a chain reaction of similar explosions all over Europe. Trotsky had fought vigorously for the utmost effort to be expended upon stimulating world revolution, and it was not until his expulsion that the party as a whole accepted Stalin's assertion that it was possible to have true socialism in a single country.¹⁸ Even with this emphasis upon domestic problems to the neglect of world revolution, the Communist International retained its Moscow headquarters and continued to work, presumably, for the overthrow of all capitalist governments.

The Comintern. It became an unobtrusive organization with few big international congresses. One was held in 1924, another in 1928, and the next not until 1935. But the permanent organization of the International remained at work, training Communists from other countries in the best techniques of agitation and revolution and coördinating the policies of the national Communist parties with the current foreign policies of the Soviet Union. In his steady progress toward international respectability, Stalin more and more ignored the Comintern, and officially the Soviet government insisted that it had nothing to do with it and no control over it.¹⁹

The USSR concluded a number of nonaggression pacts with various neighbor countries and finally accepted membership in the League of Nations, even though, in Marxist theory, this could never succeed in preventing war so long as capitalism remained. With the rise of fascist dictatorships in Italy and Germany and the fear they aroused in the Kremlin, the Comintern came out for the united front of the Left against fascism. World revolution was shelved, for the time being at least, and Communists were to work harmoniously with their old enemies, the Second International of the Socialist parties (whom they had recently been calling "social fascists"), and with any and all others who were anti-fascists.²⁰ Thenceforward this became the policy of the Communist parties everywhere. It led to Popular Front government coalitions in France and Spain and to Communist support in Great Britain of the Labor party and in the United States of the Democratic party.

In the Soviet Union itself the emphasis shifted from Marxist internationalism to Russian patriotism. Heroes of tsarist Russian history were extolled again after having been forgotten for years.²¹ The Soviet Fatherland replaced

¹⁸ Some, of course, never did accept his dictum and were liquidated in 1936-1938.

¹⁹ See the United States note of protest and the reply by the USSR regarding activities at the seventh All-World Congress of the Communist International in 1935. These are contained in International Conciliation Pamphlet No. 386 (January, 1943), "The Development of Soviet Foreign Policy in Europe, 1917-1942," 25 ff.

²⁰ *Ibid.*, 31, gives the text of the Comintern resolution of August 20, 1935, on the United Front policy.

²¹ Maynard notes that a schoolmaster who had been dismissed in 1933 for praising the tsarist generals of the Napoleonic war ("counterrevolutionary" behavior) was extolled in the press for his patriotism in June, 1938. See Maynard, *Russia in Flux* (New York, 1948), p. 481.

the international working class as an object of devotion, and the Red army oath was altered accordingly in 1938. This trend has continued and has resulted in the attempt to discourage local pride, traditions, and language in the various republics of the union, with Great Russian language and patriotism disguised as loyalty to the Soviet Fatherland.²²

Dissolution of the Comintern. In 1940 the Communist party of the United States formally resigned from the Comintern so that its members would not be obliged to register as agents of a foreign organization, and in 1943 the presidium of the executive committee of the Comintern decided unanimously to suggest dissolution of the Comintern. The leaders explained that different conditions in the various countries required different policies, which made an international directorate inappropriate. At the moment, it was declared, the important task everywhere was to support all governments engaged in the war with Nazi Germany.²³ This was quite obviously a gesture of appeasement toward the non-Communist allies of the USSR. It was the high-water mark of the Popular Front policy.²⁴

The Cominform. That the international bonds of the Communist party actually remained intact was evidenced by the unanimous and disciplined response of all Communist parties to changes in the party "line" as required by shifts in Soviet foreign policy. In the United States the removal of Earl Browder as party chief in 1945, two years after the dissolution of the Comintern, was necessitated by the abandonment here, as everywhere, of the Popular Front policy with which he had been deeply indentified. In Browder's case there was public knowledge of the part played in his ouster by the French Communist leader, Jacques Duclos, who doubtless had Moscow's approval. Although there can be no doubt that the bonds between Moscow and the various national Communist parties had remained essentially unaffected by the dissolution of the Comintern, the coöperation of these parties with each other left much to be desired in the postwar national scramble for disputed territories. The Polish and Czech parties took opposed views as regards Teschen, which the prewar Polish government had seized from Czechoslovakia. The Italian Communists found it impossible to back Yugoslav claims to Trieste, even though denounced for this nationalist attitude by Jacques Duclos, the Kremlin's "hatchet man."

This situation, together with the partial abandonment of the Popular Front

²² See above, p. 666.

²³ The declaration is printed in Martin Ebon, *World Communism* (New York, 1948), pp. 495-497.

²⁴ Many Comintern leaders remained in Moscow until, after the Allied victory, Moscow sent them to their respective countries to head the parties and, in some cases, the governments. Such leaders included Togliatti in Italy, Thorez in France, Dimitrov in Bulgaria, Pieck in Eastern Germany, Rakosi in Hungary, and Gottwald in Czechoslovakia.

policy as no longer practicable in the emerging "cold war," led to the public re-establishment of an international organ, the Communist Information Bureau or Cominform. This was done at a meeting of nine national Communist leaders in September, 1947, and had been preceded by what amounted to secret international conferences held in connection with ostensibly national Communist congresses.²⁵ The new form taken by the international organ was better suited to the purpose of the Stalin dictatorship.²⁶ The old Comintern had been a meeting of ostensible equals, a band of brothers arriving at unanimous policies by the method of "democratic centralism." The new Cominform was useful in issuing blasts against the Marshall Plan, Titoism, and other persons and movements hostile to Soviet interests. It was also a means of ironing out differences between national parties and in coordinating Communist propaganda and agitation throughout the world. It was not given any of the secret control apparatus, MGB agents, and so forth, which remained in Russian hands. The Kremlin had no intention of permitting any genuine international Communist direction of the various national parties.

The Cominform's subservience to Stalin was underlined by the expulsion of the Yugoslav members at a meeting in Bucharest in June, 1948, an action which the Yugoslavs claimed was "unconstitutional," and indicated the intention of Moscow to use the agency to punish nonconformist Communist parties. For the rest, as stated above, the Communist party of the Soviet Union absorbed the old Comintern function of training and controlling foreign Communists.

World revolution or coexistence? Much ink has been spilled discussing and attempting to evaluate the actual plans of the Soviet dictatorship in foreign policy. A few non-Communists are convinced of its essentially pacific intentions. Many more are certain that it is awaiting favorable opportunity to attempt world conquest by force of arms. Some have given up the attempt to prognosticate and quote with approval Winston Churchill's famous description: "A riddle wrapped in a mystery, inside an enigma." The changes in the attitudes and behavior of Soviet diplomats, the late Stalin's various seemingly contradictory statements regarding the impossibility of socialist safety in a capitalist world and the possibility of peaceful coexistence, have puzzled many observers.

Broadly speaking, Soviet foreign policy seems explicable in the light of two considerations. In the first place, the Soviet leaders have been genuinely afraid of foreign intervention. The ancient Russian fear of invasion, experienced so often in the past, and twice within the memory of middle-aged men,

²⁵ See installment 16 of series of articles by Lt. Gen. Walter Bedell Smith, "My Three Years in Moscow," *New York Times*, Nov. 21, 1949.

²⁶ An abridgement of the declaration setting up the Cominform is given in Martin Ebon, *op. cit.*, p. 497.

has been heightened by the Marxist belief that a socialist society must always be a challenge to capitalist states which they can hardly forbear to attack. On the other hand, there is the Marxist notion that capitalism, however prosperous a capitalist state may seem to be, contains within itself the seeds of its own destruction. No outside attack is necessary to accomplish its downfall. At the proper moment, when the system has collapsed, trained Communists will be ready to take command from within the state itself. It follows that the correct and economical policy for the Soviet Union is, first, to build up its defenses at home, strengthen its borders, and extend them as far from the center as possible (as in Finland, the Baltic states, Germany, Poland, the South Slav countries, and Hungary); and secondly, to encourage division among its foes, use the national Communist parties to spread the views most useful at the moment, and prepare them in the technique of revolution for the day of capitalist collapse.

In a sense, therefore, both coexistence and world revolution are part of the Soviet plan. Coexistence involves the establishing of trade and other friendly relations with non-Communist governments; it involves the use of the United Nations without for a moment believing that such an organization can alter the march of history. It explains, in part, the "peace offensive" which has impressed many non-Communists.²⁷ The concept of the world revolution (which is actually one of a series of revolutions in various states as they become "ripe" for it) means that the Communist parties throughout the world must be prepared to hasten the day of collapse, not by premature insurrection, but by stressing the weaknesses of society, the injustices suffered by minority groups, its inequalities of income, the wrongs of labor, and so forth. Then when the masses rise in revolt the Communists will be ready to lead them. It is no part of this policy to allow the Soviet Union to be forced into a world war, the outcome of which would be problematical.

To push out the borders without becoming embroiled in a major war, to keep the capitalist enemy off-balance by suddenly changing the point of pressure, all this is a planned part of the over-all policy. The great danger is that Soviet fears of foreign "encirclement" may induce them to undertake such aggressive "defensive" moves that despite their plans they may bring about the world war they do not want.

The Communist Party of the USSR. The official party history, mentioned previously, is highly disingenuous, and the most useful Russian sources are the speeches and proceedings of the rare all-union congresses together with the directives and decrees of the central committee as reported in *Pravda* and other newspapers. The speeches and reports at the seventeenth all-union congress are

²⁷ Intended mainly to discourage the Western defense build-up

available in translation in J. Stalin and others, *Socialism Victorious* (New York, 1935). Current news of party activities is available in *Soviet Press Translations* and *Current Digest of the Soviet Press*, mentioned in the bibliography of the preceding chapter. A summarization of the rules which provide a guidance for top party decisions is attempted in Nathan Leites, *The Operational Code of the Politburo* (New York, 1951). See also Louis Nemzer, "The Kremlin's Professional Staff: The 'Apparatus' of the Central Committee, Communist Party of the Soviet Union," in the *American Political Science Review*, Vol. XLIV (March, 1950); Georg K. Schueller, *The Politburo* (Stanford, 1951); and J. Towster "Presidium replaces Politburo," in *Current History* (January, 1953). Victor Kravchenko, "The Politburo," *Fortune*, Sept., 1946, 93-99, is an interesting article by an ex-Communist. Party education and recruitment is treated in Samuel N. Harper, *Making Bolsheviks* (Chicago, 1931), and a useful summary of party history is provided in Barrington Moore, Jr., "The Communist Party of the Soviet Union: 1928-1944," *American Sociological Review*, June, 1944, 267-278. Attention may be called to Alex Inkeles, *Public Opinion in Soviet Russia* (Cambridge, Mass., 1950).

Soviet Foreign Policy and International Communism. There is a great deal of published material on this subject. The following may be mentioned as containing a diversity of material and analysis: Max Beloff, *The Foreign Policy of Soviet Russia, 1929-1941* (Royal Institute of International Affairs, Oxford, 1947); David J. Dallin, *Soviet Russia's Foreign Policy, 1939-1942* (New Haven, 1942), and *Russia and Postwar Europe* (New Haven, 1943); E. H. Carr, *The Soviet Impact on the Western World* (New York, 1946); Vera Micheles Dean, *The United States and Russia* (Cambridge, Mass., 1947); Sir Bernard Pares, *Russia and the Peace* (New York, 1944); and two books by Josef Stalin, *Marxism and the National and Colonial Question: Selected Speeches* (New York, 1942), and *The Great Patriotic War of the Soviet Union* (New York, 1945). Attention should be called to the revised edition of Louis Fischer's *The Soviets in World Affairs* (Princeton, 1951); and to Hugh Seton-Watson, *From Lenin to Malenkov* (New York, 1954). For a concise history of American Russian relations, see W. P. Williams, *American Russian Relations, 1781-1947* (New York, 1952). A useful study by a former German Communist official is Franz Borkenav, *World Communism* (New York, 1948). Two informative articles, one by a State Department official ("Historicus"), are the latter's "Stalin on Revolution," *Foreign Affairs*, Jan., 1949, and "X" (George F. Kennan), "The Sources of Soviet Conduct," *Foreign Affairs*, July, 1947. The current "party line" of the American Communists can be followed in the New York periodicals, *Daily Worker*, *New Masses*, and *Mainstream*. The relationship between the American Communist party and that of the Soviet Union is discussed in James Oneal and G. A. Werner, *American Communism* (New York, 1947).

Biographies. In addition to Leon Trotsky's autobiography, *My Life* (New York, 1930), two outstanding studies of the great party leaders are: David Shub, *Lenin: A Biography* (New York, 1948), and Isaac Deutscher, *Stalin, a Political Biography* (New York, 1949).

CHAPTER XLII

Soviet Domestic Policies: The Problems of Totalitarian Socialism

In the U.S.S.R. the principle of socialism is realised: "From each according to his ability, to each according to the work performed."—From Article 12 of the USSR constitution

PLANNING

In a capitalistic, free-market economy, the part played by governmental planning, investment, and purchasing is incidental, even though it may be extensive during an armaments expansion drive, for instance. But by and large, the general public spends its income as it likes after taxes and entrepreneurs respond to the demands thus created and try to anticipate them in building factories, opening retail stores, and so forth. The number and kinds of shoes produced in any year will depend not upon a bureaucratic decision but upon the available supply of materials, the estimated costs of production, the forecast by retailer, wholesaler, and manufacturer of the probable demand at various prices, style trends, and a number of other factors. With the abandonment of Lenin's New Economic Policy of partial capitalism, it became necessary for the Soviet authorities to plan production of everything. The automatic or semiautomatic mechanism of the free market had been abolished. The manufacturer was no longer a business man concerned with demand, competition, price factors, and the chance of profit; he had become an employee of the state, ordered to make a specific number and quality of a certain product which would then be used by the state itself or distributed to the public through a state-owned distribution system.

The State Planning Committee (Gosplan). In February, 1921, the State Planning Committee, commonly called Gosplan, was set up to prepare an over-all plan for the Soviet economy. At first it consisted of a mere handful of economists and others but by 1925 it had increased its personnel several

times over and established a network of offices throughout the union. At first some of the Gosplan economists thought that this job was rather like that of the American president's Council of Economic Advisers—to forecast economic trends. Some of them were pessimistic and were duly purged for their unpopular views. It was made clear to the remainder that their job was creative rather than prophetic and they produced in due course several alternative plans. The sixteenth Congress of the Communist Party adopted the most ambitious of these in April, 1929, although orders putting the plan into effect had been issued in 1928.

Since that time there have been successive plans for the entire Soviet economy. Gosplan now has a large central staff and local branches throughout the country. In addition, all sorts of experts are called into consultation, and even ordinary factory workers are encouraged to submit "counterplans" which invariably call for greater production than had been estimated. One may assume that this aspect of planning is intended to give a sense of participation to the working man rather than to be considered seriously by the planners.

The planning procedures. The over-all objectives are first laid down by the central committee of the Communist party and the Supreme Soviet, presumably after they have been approved by the party presidium. It is evident that little attempt is made to consider the consumer's point of view. The main production objective is set for the next five-year period and this has always been heavy industry, basic materials, transportation, and the like. The consumers' goods industries have to make do with what is left over after the bulk of investment has been allocated elsewhere.

After acceptance, the general plan is broken down by areas and the Gosplan bureaucrats work with the ministerial, republic, and provincial planning authorities, who, of course, have their own ideas as to what should be done in their particular industries and areas. Compromises are worked out and, if necessary, the final decision is made by the high command of the party. No doubt political connections and other noneconomic factors may influence such decisions.

Checking the operation of the plan. As always in the Soviet system, there is a multiplicity of controls over the execution of the plans. In the first place, Gosplan employees as well as those of the Central Statistical Administration keep a constant check on production throughout the economy. Ministries at all levels also keep track of production. The ministry of finance, through the state bank which advances money to the enterprises and through the tax officials who check the books in order to assess taxes, have a pretty complete picture of the production situation. The ministry of state control has the function of watching over the execution of all governmental decisions including

economic ones, and its agents comprise another set of inspectors. And of course the Communist party, through its primary units as well as its higher establishments, is supposed to have a prime duty to see that the plan is followed faithfully in every respect.¹ Ordinary citizens, too, are supposed through "criticism and self-criticism" to complain to the authorities or write letters to the papers if they find laxness, inefficiency, or anything else that militates establishments, particularly in case of suspected sabotage.

The various Five-Year Plans. The first Five-Year Plan was said to have been completed in a little over four years, by the close of 1932. Emphasis had been placed upon machinery, which was overfulfilled to the extent of 157 per cent of the plan. Some other parts of the plan were far less successful and failed to come close to planned objectives. The second FYP (the initials are commonly used in the Soviet Union) was projected for the years 1933-1937. Railroad transportation was emphasized and fulfilled in four years, according to the Soviet press. Again, however, basic metals were underproduced and consumer's goods generally were well below the planned figure. The third FYP, to cover 1938-1942, had to be altered drastically when the Nazi armies invaded the union and was superseded by "war economy plans." The fourth FYP was adopted by a law of the Supreme Soviet in March, 1946, to cover the years 1945-1950.² The Central Statistical Administration reported in July, 1949, that this plan was near completion at the end of four years. Much overfulfillment was claimed, but some uneven advance admitted. The coal industry was criticized for failure to mechanize sufficiently.

What the plans mean. The Five-Year Plans are not intended to produce a balanced, orderly economic development toward a welfare state. If this were the case the authorities would not applaud overfulfillment any more than a railroad would give a bonus to an engineer who brought his train in ahead of schedule. Orderly advance, with a careful allocation of investment to produce the maximum of benefit for the citizens, has been abandoned for political and military objectives. Indeed, as someone has pointed out, the plan is not so much a genuine plan as a series of goals intended to prod the managers and workers into making the maximum effort. If a goal is achieved before the expiration of the plan, the plan itself is revised to call for added production.

Where the capital comes from. In a free-market economy, investment must come mainly from savings. Individuals choose not to spend all their income but to invest it directly or put it into bank accounts, insurance, and so

¹ The various party organizations are supposed to be coördinated in this activity by the production department of the central committee. See Louis Nemzer, "The Kremlin's Professional Staff . . .," *Am. Pol. Sc. Rev.* (March, 1950), 64-85.

² It was the first FYP to be launched by this method. Previously all had been adopted simply by the Congress of the Communist party.

forth. The stocks of money so saved are then lent to entrepreneurs who finance their commercial operations, build factories, and increase the productive side of the economy. In the Soviet Union there are not nearly enough private savings to finance industry. Those citizens whose income permits saving are, indeed, encouraged to save through the payment of interest on their savings accounts and government bonds. A small additional amount comes from exports to Great Britain and other countries beyond the "Iron Curtain." Another source of income is trade with the satellite nations, which trade is under the domination of the Soviet Union. Soviet goods are exported to these countries at high prices and other goods purchased there for the Soviet Union at prices below those prevailing in the world market, so that these countries are, in effect, subsidizing the Soviet Union. During the Second World War, Lend-Lease and mutual aid programs provided significant amounts not only of war material and capital goods, but also of food and other consumers' goods. Following the war, extensive seizures of plants and machinery as reparations from Manchuria, Eastern Europe, and elsewhere did much to make up for the destruction of Soviet installations during the war.

The turnover tax. Standard practice in the Soviet economy, however, is to depend mainly upon taxation as a source of capital. The income tax, less steeply graduated than in Great Britain or the United States, provides a small part of this income. By far the largest amount comes from the so-called turnover tax levied on manufactured goods. This tax falls eventually upon the ultimate consumer and so is really a kind of sales tax. According to Baykov,³ this tax has been the source of between half and two-thirds of the total income of the Soviet governments. As we shall see, this means that the Soviet consumer is kept at a very low real income level, according to our standards, in order that the desired expansion of industry may be financed. It is probable, although not actually provable by Soviet statistics, that about 30 per cent of the total national income is devoted to investment. Economists consider this to be extremely high proportion for a relatively poor country such as the USSR.⁴

INDUSTRIAL MANAGEMENT

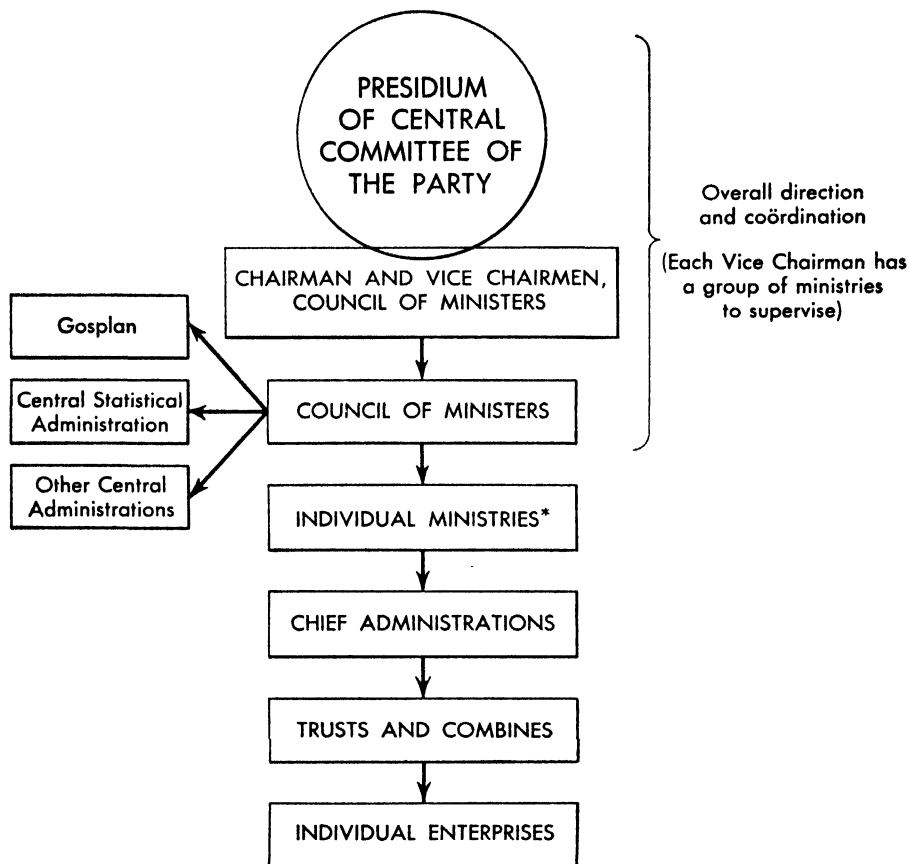
The official industrial hierarchy. The individual production unit may be a single factory or a trust or combine linking together a group of raw material extraction enterprises with the plants that process the materials when all of these are located in a contiguous area.⁵ Each individual mine or plant in the

³ Alexander Baykov, *The Development of the Soviet Economic System* (Cambridge, Mass., 1946, p. 397.

⁴ See Seymour Harris, *Economic Planning* (New York, 1949), Chapter xix.

⁵ H. Schwartz mentions as an example the Magnitogorsk Combine which includes iron mines, steel mills, and coke and chemical plants, all found in or near the city of Magnitogorsk. *Russia's Soviet Economy* (New York, 1950), p. 176.

combine has a director who is administratively responsible to the combine management. Above the trust or combine is a chief administration which has under its supervision all the enterprises in a particular area or of a particular specialty that fall within the scope of its ministry. The chief administrations



ORGANIZATION OF SOVIET INDUSTRY

* Both Union and Union-Republic. For a list of ministries of both kinds see above, p. 658. The ministries have wide power to hire and fire principal subordinates. They provide many staff services (accounting, finance, and so on) for producing units. The Chief Administrations supervise all the plants in a particular area or those concerned with any stages of a particular product which falls within the jurisdiction of a ministry.

are under the direction of the minister, who is a member of the council of ministers and must respond to its over-all decisions. In theory, of course, he is appointed by and is responsible to the Supreme Soviet. In practice, the council of ministers is dominated by its political portion: the chairman and vice chairmen who represent an overlapping directorate with the party organization. Each vice chairman has a group of ministries under his general supervision.

The above represents the usual arrangement, although sometimes a particularly important factory will fall administratively directly under a ministry without the intervening steps of a trust and a chief administration. In other cases the stages of control are even more numerous than those indicated as typical. The foregoing chart may help to explain the administrative complex.

Factory management: the director's problems. Each producing unit or enterprise has a charter of incorporation issued by its ministry. As such it can sue and be sued and own property. It has its own bank account, may borrow money from the bank to finance its business, and in many ways enjoys a considerable amount of autonomy. Its administrative chief is called a director whose main job it is so to manage the enterprise that it fulfils its share of the current FYP and, if possible, does even better than that. The director, however, is not free to reach this goal by whatever means he chooses. Nevertheless, he is under enormous pressure to meet the planned goal because failure to do so may result in serious penalties or even a charge of sabotage and exile to a concentration camp. From time to time the Soviet press accuses managers of issuing false reports and resorting to other illegal devices to cover failure. For this reason, too, the directors fight hard to have the planned production set as low as possible. They have even been known to discourage attempts to raise production by improved techniques lest this result in the setting of a higher production goal and a reduction in their margin of safety between the planned and the possible output. They tend to hoard scarce materials and to retain unnecessary labor force for the same reason.

Apart from the above, directors complain about the bureaucratic direction of their enterprises. They are bound by tables of organization laid down by the ministry or the chief administrations and may not make changes even to increase efficiency. They are limited in the amount of direction they can give in apportioning the work load and in emphasizing one part of the enterprise at the expense of another. They complain about the multiplicity of masters they must serve, all of whom issue orders and sometimes contradictory orders. They complain, too, about the rigid rules under which the bank operates in making loans.⁶ Apart from the ministerial supervision and direction they are under constant inspection by the local Communist party and particularly its secretary. There has been a tendency for the directors to court the secretary, cultivate him socially, and shower gifts upon him so as to have a "friend at court" if the need arises. In addition, the director must deal with the primary party organ within the enterprise itself, but he is more concerned with the

⁶ See H. Schwartz, *Russia's Soviet Economy* (New York, 1950). pp 185 186, quoting *Leningradskaya Pravda*, issue of May 12, 1950.

regional organization and its secretary. Regional party chiefs are able to secure the dismissal of factory directors of whom they disapprove. The party press has outbursts from time to time against the fraternizing tendency between factory directors and their custodians, the party chiefs. The old problem remains: *Quis custodiet ipsos custodios?*

The rewards of good management. On the positive side, a factory director is rewarded for successful production. All of his produce is sold at fixed prices made up of the production at cost plus turnover tax plus a "planned profit." If he has been able to lower production costs per item below the estimated figure, he will be able to show a profit over and above the amount planned. For this he will receive a salary bonus. In addition he will receive a substantial amount (from 25 to 50 per cent) of the unplanned profits as a contribution to his "director's fund." This fund is expended upon bonuses to outstanding workers and improvements in the factory rest rooms, recreation facilities, and the like.

Labor unions. Almost all Soviet industrial workers are organized into unions.⁷ But these unions have functions which differ in important respects from those of unions in a capitalist system. Their prime function is supposed to be the encouragement of maximum production. Secondly they exist to ensure the safety and welfare of the working force. They may not bargain with management about over-all wage rates and they may not call strikes. The unions are organized on an industrial basis. There is a local of the union in each plant with insurance delegates and labor-protection inspectors elected by the membership. The union safety inspector is supposed to examine and approve all new buildings and machines before they may be used. Most unions have several "commissions." One of these is "production," which is the most important from the official standpoint. The production commission organizes "socialist competition" within the plant or between competing plants and tries in every way to raise production. The safety measures and labor protection commissions deal with the proper observance of labor laws and safety regulations. The cultural commission is concerned with organized recreation, sports, dramatic clubs, and so forth. Finally, the rates and grievances commission discusses with management any differences that may arise concerning the proper wage classification of various categories of workers or other grievances that lie within the discretion of management to correct.

What the unions accomplish. As we have seen, the labor unions of the Soviet Union cannot hope to secure by their united action any greater share of the national product than is determined in advance by the government at its highest levels. Neither they nor management have any control over this.

⁷ Excluding the vast number of workers in the "correctional" labor camps.

Nevertheless, they do bargain collectively over other matters, and no doubt this process gives the union members a feeling that they have a share in determining the conditions under which they work.

The projected contracts are discussed first at the level of the ministry and the central committee of the union. A projected contract is then submitted to the factory directors and the union locals. After discussion, this may be sent back to the ministry and the union's central committee for revision. Before final signing, the rank and file of the union are asked to submit suggestions. It is impossible to say how much genuine bargaining takes place in this whole process, but it seems entirely possible that the unions may be able to win a point here and there as to the disposition of the director's fund, for example.

Stimuli and controls. Neither management nor labor is actually free to employ the methods of settling labor disputes that obtain in a free-market economy. In theory, of course, there can never be such disputes in the Soviet Union because class has been abolished, the workers own everything, and their chief concern must always be the increase of production in all fields. In reality, the Russian industrial worker may well feel that his "ownership" of everything is only nominal and that his interests and those of management are by no means always identical, in spite of the theory. In fact the tendency of Soviet workmen has been to concern themselves chiefly with their personal income and living conditions just as people do everywhere else. Because of the sharp differences in the quality and quantity of housing, factory restaurants, and so forth, the Russian workmen have tended to move from job to job always seeking an improvement in their lot. This, of course, did not make for maximum production, and there have been a whole series of decrees and laws intended to put a stop to such wanderings. When voluntary resignation was made illegal, workmen sometimes deliberately loafed, were tardy, or were often absent in order to secure dismissal and a chance to go elsewhere. Then in June, 1940, at the height of the prewar production drive, absenteeism and tardiness were made punishable by compulsory labor *at the usual employment* with a 25 per cent cut in wages. By an earlier decree all state and coöperative employees (virtually the entire labor force) have to carry a labor book containing a record of all employment and the reasons for any transfer of job.

On the side of rewards, the smart and skilful workman may hope to earn a great deal more than the basic wage. If he devises a new technique for increasing production he is hailed as a Stakhanovite and is in line for substantial honors and emoluments.⁸

⁸ In 1935 a coal miner named Stakhanov mined 102 tons of coal in six hours, earning more than the average monthly wage for his day's work. This was accomplished by improved techniques and tools. Stakhanov was given tremendous publicity and made the symbol of the ideal worker.

The relative success of Soviet industry. The claims made by Soviet authorities of astonishing progress in industrial development are difficult to assess with precision. To begin with, production was extremely low by American standards. A new managerial staff had to be trained; with few exceptions factories were poorly equipped with obsolete foreign machinery for which there were no spare parts. Many operations that are normally machine-performed in our industry still had to be done by hand. Scientific efficiency methods in production and administration were unknown. Much of this has now been overcome, although, as we have observed, top-heavy and overlapping bureaucratic control is still a handicap. Some foreign observers have asserted that another difficulty is the relative scarcity of skilled and trained personnel at the intermediate level—between the management and the ordinary workmen. Soviet figures on increased production need careful interpretation because of the peculiarities of the Soviet price-system. By using an arbitrary price formula Soviet statisticians have been able greatly to exaggerate Soviet industrial development.

AGRICULTURAL PRODUCTION

Planning and controlling industrial production, difficult and complicated as it is, presents relatively simple problems compared with those of socialist agriculture. The history of Soviet farming since 1917 is a fascinating chapter in the entire story of Communist theory and practice and the reader is advised to peruse it in detail.⁹ Unfortunately it must be greatly compressed for our purposes in this book.

It will be remembered that the peasantry seized the land from the gentry in the early days of the revolution, but that their early enthusiasm for the new régime cooled rapidly with the liquidation of the Social Revolutionaries and the Bolshevik grain expropriations. For a period of years arguments were carried on at the highest levels of the Communist party as to the correct way to solve the agricultural problem. The peasants were hard to manage. If they were dissatisfied either with the low prices of their farm produce or the high prices of manufactured goods, they would withhold their produce from the market. Although they might specialize in a cash crop they still held to enough mixed farming to make them relatively independent and able to exist, if need be, without the products of industry. Nor were the peasants Communists. Despite years of intensive effort there are still many collective farms without any primary party organ.

The collective farms: kolkhozy. Stalin's answer to these difficulties was

⁹ See Maynard, *Russia in Flux*, and the appropriate chapters in Baykov, *The Development of the Soviet Economic System* (Cambridge, Mass., 1946).

the collectivization of agriculture. The collective farms could be controlled far more effectively than the tiny farms of individual peasants. So long as the farm was directed by men responsive to government and party, the uncoöperative spirit of the peasants could be rendered unimportant. Further, the poor peasants might be educated on the collectives and eventually brought into sympathy with the régime. At the same time their approval could be won by enlisting their aid in the destruction of the rich peasants of whom they were jealous and who were the least amenable to discipline.

At first collectivization was voluntary. The poor peasants were urged to join a collective farm (*kolkhoz*) and many did so. For the most part a village meeting would take a vote on the matter, and if a majority wanted to form a collective this would be done. There were certain advantages as regards taxation in so doing, and the very poor peasants believed that they would fare better in the collective. As a result the number of collective farms almost tripled between 1927 and 1929.

The liquidation of the kulaks. At this time Stalin felt that further progress could only be achieved by the destruction of the richer peasants. As noted earlier (see above, p. 652) this was accomplished quickly and brutally in the summer of 1929 with the aid of Communist "shock troops" from the urban districts.

The kolkhoz. The kolkhoz is a genuine collective in form. It consists of a definite plot of land leased permanently, according to the constitution, by the association of collective farmers who constitute its membership. The land itself belongs to the association in perpetuity and may neither be sublet nor sold. The kolkhoz also owns buildings and equipment including animals, although for the most part it is dependent for heavy machinery upon the nearest machine tractor station of the ministry of agriculture. Each collective farm household has a small private plot of its own assigned to it. This varies in size depending upon the region and its farm economy. A specified amount of farm produce must be sold by the collective to the state at state-fixed prices. A portion of the produce of the farmers' private plots must also be sold to the state. The remainder of the collective and private produce may then be sold on the open market.¹⁰

Management. Theoretically forming a collective democracy, the farmers in a kolkhoz were supposed to pick their own chairman. Due to the unreli-

¹⁰ In greater detail, the scheme is as follows: the state is paid in a tax in kind, so much per unit of land or a previously agreed amount of certain crops for which the state pays a "very low price." This means that crop failures are borne by the farm. The MTS (Machine tractor station) is also paid in kind. A reserve of the produce is kept for seed, fodder, and other purposes. The remaining produce is sold for cash, either to the government or on the open market, or is divided among the members according to their work-days. The part sold provides cash income for the farm with which to pay its insurance premiums, provide new capital investment, and repair existing buildings and equipment. If any money is left over it is divided among members.

bility of the peasantry from the party point of view, the practice has been to appoint farm chairmen. These are frequently not farmers at all but Communist administrators. They are responsible not to the farmers of the collective but to their party superiors. It is not astonishing to learn that poor management has been a frequent complaint. The kolkhoz has a managing board which is supposed to decide how the farm's income shall be spent, allocate payments to various members in accordance with the number of "labor days" each has contributed, and so forth. Some of its decisions are supposed to be reviewed by the total membership. Complaints in the Soviet press would indicate that on many farms the total membership almost never has a meeting and that the decisions supposedly made by the managing board are actually made by the chairman.

The farm plan. The collective farms are supposed to fit into a national plan just as industry does. According to theory, the national plan is broken down into segments, one for each county. The *county* executive committee then assigns its task to each collective farm in the rayon. The kolkhoz reviews the plan and sends it back to the *county* committee with suggested amendments which must be accepted if they do not contravene the over-all plan. The practice seems to be that the plan is accepted from the *county* executive committee without amendments but that its complete fulfillment is far from guaranteed by this act.

The control of the farm. Again we have to note a confusing multiplicity of controls, so characteristic of the Soviet system. No one is really trusted and it would appear that many controls are felt to be the only safeguard against inefficiency, incompetence, and outright sabotage. We have already mentioned the *county* executive committee as the immediate source of the farm plan. Then the *county* committee of the Communist party is supposedly very active in supervising the kolkhoz. Furthermore, the MTS (machine tractor station) is in a strategic position to exercise control through its contractual agreement with the farm relative to the use of machinery for planting, cultivating, and harvesting.¹¹ Each MTS has a deputy director whose job it is to act as general supervisor, to investigate army difficulties on the farms, and diagnose the trouble. He is always a reliable Communist.

How the farmers' work is organized. One great advantage of the kolkhoz from the Communist viewpoint is its susceptibility to the techniques of factory organization including incentive pay systems. The collective farmers are divided into brigades, and these are subdivided into detachments or "links" for specific jobs. Each brigade has a given sector of the farm to work through-

¹¹ According to H. Schwartz, *Russia's Soviet Economy* (New York, 1950), p. 281, there were in 1950 about 8,100 machine tractor stations. Each, on the average, served thirty collective farms.

out a complete production cycle. The brigade leader is the key man. He assigns work, keeps track of each farmer's time, and so forth. Jobs are rated according to the heaviness of the labor and the amount of skill required. A full day's work at a simple job may rate as one labor day or even less, whereas a skilled tractor operator may be credited with several labor days for a single day at the wheel.¹²

Farm problems. Quite apart from factors not susceptible of control, such as the weather, it is safe to say that the planned control of agriculture is less successful than in the case of industry. The farmers are not at all keen on "socialist competition," despite the prizes and medals and local fame that are the rewards of those who make outstanding records.¹³ They resist the labor-day system of payment, and complaints are frequent that income is distributed on some farms without proper regard to labor-days worked.

Almost everywhere there exists the deplorable tendency to spend less and less time on the fields of the collective farm and more time on the private plots. There is even a tendency to expand the size of these private holdings at the expense of the collective land.¹⁴ Even though a proportion of this private production must be sold to the state at fixed prices, the income derived from selling the remainder on the free market pays the farmer far better than his work on the collective.¹⁵ Attempts to compel the farmers to work at least a minimum number of days on the collective seem to have been only partly successful. The penalty for failure to work the required number of days is expulsion from the farm, a severe punishment, but one not easily enforced against the bulk of the membership.

Has the system succeeded? Any estimate as to the success of the collective farm system is bound to be tentative. The collective farms now dominate completely the agricultural scene in the Soviet Union. Depending upon the area considered, from 78 to 99 per cent of all cultivated land is in the collectives. Indeed, it would seem to have been impossible for the Soviet government to have avoided the socialization of agriculture. Without a fair measure of control over the food and basic materials produced on the farms, it

¹² H. Schwartz, p. 262, gives the following examples: weeding one acre of onions counts one-half work-day; picking two acres of cotton counts two and one-half work-days.

¹³ In the *New York Times*, April 22, 1949, there was a dispatch by Joseph Newman listing the awards offered in a drive to increase dairy and livestock production. Members of farms surpassing the annual planned production by 50 per cent would receive the highest award, Hero of Socialist Labor, and so forth.

¹⁴ Estimated by Soviet sources as amounting to almost double the legal size of private holdings, as of 1939. (Mentioned in John Barrington Moore, Jr., *Soviet Politics—the Dilemma of Power* (Cambridge, Mass., 1950).)

¹⁵ It is estimated by the Russian agricultural authority, Naum Jasny, that the farmer earns about two and a quarter times as much by working on his private plot. His extreme poverty is indicated by Jasny's estimate for the prewar years of a farm worker's income from the collective as approximately twenty cents per work-day, including pay in kind and money. See Naum Jasny, "Plight of the Collective Farms," *Journal of Farm Economics*, May, 1948.

would have been seriously handicapped in any attempt to organize on a socialist basis the rest of the economy. Russian agriculture was backward to start with. The peasant has not been receptive to improved methods or to the incentives designed to induce his best efforts. Farm workers in Russia are poor producers according to Western standards.¹⁶ This is due in part to the lack of equipment, machinery, and fertilizers. Nevertheless, farm production has increased sufficiently to permit greatly increased industrial production, even though it has tended to lag behind industry, and the farmers are far from satisfied.¹⁷ Their chief complaint is a simple one: they feel that their efforts are insufficiently rewarded, that the city worker is relatively pampered in comparison. The peasant feels that, as under Peter the Great, he is bearing an undue share of the burden of national and industrial expansion.¹⁸

The sovkhosy. A word may be added about the state farms, or sovkhosy. These were instituted in Lenin's time, taking over very large estates. Unlike the collectives, they are state-owned, and their labor is employed as in industry on a wage basis. Intended to serve as model farms and to further agricultural experimentation as well as to provide a substantial amount of produce for state use, they have not been very successful, according to most observers. Their production is often more costly than that of the collectives.¹⁹ There has been no attempt to extend the use of state farms since 1928-1932, when there was trouble with the collectives and a serious grain shortage. In 1938 there were about 4,000 state farms, working about 10 per cent of all farmed land.

The new supercollectives. The latest move in Soviet agriculture has been the merging of collectives into larger collectives.²⁰ Early in 1951 it was announced that this number had been reduced by mergers to about 120,000. Why has this been done? Probably there are several reasons. It is claimed that the benefits of mechanized farming might be utilized most advantageously on very large farms. Anything smaller than 1,000 acres was considered too small. It is claimed also that the merged collectives, averaging perhaps

¹⁶ Estimated at twelve workers per hundred acres, over twice as many on English farms. Increased mechanization may now have reduced this figure somewhat.

¹⁷ It is evident from various Soviet press reports that the government envisages tremendous increases in agricultural production with several grain-importing republics striving for self-sufficiency.

¹⁸ Naturally there is great variation in the relative prosperity of collectives. There are "millionaire" collectives fortunately located and well run which used to be shown to foreign visitors, and there are others not so impressive. What seems to be a fair description of an average collective may be read in an anonymous article, "Life on a Soviet Collective" in the *New York Times Magazine*, February 27, 1949, 12 ff.

¹⁹ For a grim picture of life on a state farm see the letter of a former state farm agronomist, N. Nessin, in the *New York Times*, November 9, 1949. Note that Nessin's experiences date from the thirties and were confined to a single farm, not necessarily typical.

²⁰ See articles by: Isaac Deutscher, "Explosive Issue in the U.S.S.R.," *The Reporter*, July 24, 1951, 27 ff.; Boris I. Nicolaevsky, "The New Soviet Campaign against the Peasants," *Russian Review*, x, 2, April, 1951, 81-98; Lazar Volin, "Soviet Collective Farm Mergers," *Foreign Agriculture* (issued by U. S. Dept. of Agriculture), xv, 5, May, 1951, 95-99.

2,500 acres, will need fewer workers per acre. It is hoped, too, that the reduction in number of individual collectives may permit the reduction of the enormous farm bureaucracy.²¹

The main reason: tighter party control. The cogency of the above arguments is debatable. Competent agronomists will challenge the claim that the giant farm is necessarily more efficient. So far there seems to have been no significant reduction in worker personnel or in bureaucrats. But during the war a certain amount of "rotten individualism" had crept back into the farms. Chairmen, acting on the principle, "Anything to stimulate production," had winked at the encroachment on collective property of individual plots. While Andreev was in charge of kolkhozy (from 1946 to early 1950) he had emphasized the small "link" rather than the larger brigade as the main unit in collective farm work. Sometimes the link consisted of a single family, and as it was assigned a definite plot to care for it sometimes happened that the link began to take a kind of proprietary interest in its plot. At times the relationship between the link and the farm management became something like that which had existed between the peasant family and the squire. This was regarded in high party circles as retrogressive and highly undesirable. When there were difficulties with grain collectives in 1949, the system was regarded as responsible and a change ordered. Andreev was replaced by Nikita Khrushchev of the Ukraine, also a Politburo member, and subsequently Secretary of the Communist Party, who took charge of the drive to merge collective farms. Presumably nearly all the giant collectives will have a primary party organization, something not found in a majority of the former smaller collectives.²² A renewed emphasis on the brigades and the use of links for short assignments only should prevent "individualism" from developing again.

The proposed agrogorods. The logical outcome of this trend would be the destruction of the peasant villages and their merger into agrogorods or farm-towns. Politburo-member Khrushchev suggested this in a speech made in the fall of 1950. His idea was to uproot the peasants from village life and compress them into towns of several thousand inhabitants. Their living conditions would become semiurban, no longer those of the peasant community in the immemorial Russian village. Private garden plots would still be permitted but would no longer be attached to the dwelling, a reform, incidentally, contrary to Article 7 of the constitution. This proposal was hailed in *The Agitator's*

²¹ According to Deutscher, in the article cited above, the bureaucracy accounted for the incredible figure of more than one quarter of all persons connected with collective farming. The arguments here given for the mergers summarize those mentioned in Deutscher's article.

²² For instance, in a speech made at the 1952 party congress, a Moscow representative said that in 1939 there were party cells in only 4.5 per cent of the 6,556 collective farms in the Moscow area. By 1952 the number of farms had been reduced to 1,419 by amalgamation and there were primary units in 8 per cent of these.

Notebook as "an important step toward the destruction of the contrast between town and country,"²³ in other words, toward the industrialization of agriculture, long a Communist dream. Evidently, however, Khrushchev's plan encountered universal opposition on the farms and was disavowed by *Pravda* as unofficial.²⁴ Presumably rural reaction plus the added strain it would impose upon an already inadequate housing industry led party leaders to shelve it for the time being. If this plan to urbanize the farmers were actually carried out and if it were accompanied by an increase in farm income to bring it up to an industrial level, it could mean nothing less than the destruction of the peasantry as a class and so removal of the last remaining mass opposition to the régime.

LIFE IN THE SOVIET UNION

Labor and employment. Everybody in the Soviet Union who is capable of working must work, according to the formula, "he who does not work, neither shall he eat." The vast bulk of the population are directly employed by the state as officials or in state-owned enterprises or indirectly state-employed in coöperatives including the collective farms. A very small number of persons are self-employed as artisans, or are privately employed as servants. A considerable number are found in the forced labor camps operated by the MVD where they are maintained at a low subsistence level. Unemployment is said to be nonexistent, although, in fact, there is a fair amount of "frictional" unemployment, time lost by workers moving from one job to another. The vast industrialization program has meant that there is little serious prolonged unemployment. The Russian worker can neither afford to remain out of work for long, nor is he allowed to do so. As a war measure, a labor draft was introduced in October, 1940, calling for the voluntary or compulsory enlistment of up to 1,000,000 boys aged fourteen to seventeen who would be given industrial training and then assigned to work at a place of the government's choice for a four-year period. This measure has never been repealed and the draft age has been extended to nineteen. Military service is deferred until the completion of the compulsory work period. University and technical school graduates are not immune from the draft but may also be assigned to a period of compulsory work at employment for which they have been trained.

²³ Khrushchev had founded one such agrotown on the giant collective, "Ogpu," of about 35,000 acres, near Cherkassy, Ukraine.

²⁴ That is, it was said to be Khrushchev's personal idea, something to be considered and discussed. Even aside from this radical plan the mergers have involved the displacement of many villages. According to *Moskovskaya Pravda*, October 25, 1950, thirteen collective farms were being merged into the great "Kalinin" collective. Ten of the existing villages were to be moved and consolidated with the other three. Following Stalin's death and the Kremlin reorganization, this trend was halted and even reversed with great emphasis placed once more upon the peasant's personal initiative and rewards. One may hazard a guess that this move was intended to reduce the likelihood of trouble with the farmers during the delicate and dangerous struggle among top party leaders to determine a permanent distribution of power.

Hours and wages. The work-week in most employment is six days of eight hours each. Real wages are still very low according to Western standards. In fact they have remained below Russian prewar wages. The comparison of Russian and American wages is complicated to some extent by the "social income" received by the Russian workman in the shape of cheap rent, free medical service, free vacations, and so forth. Some of these social services are not universal and others are of greatly unequal value in different parts of the union. However computed, real wages are low, as they must be in a relatively poor economy in which the major effort is placed upon basic industry and war potential rather than upon amenities and consumers' goods.²⁵

Wage rates vary in the Soviet Union even more widely than in capitalist countries. Among wage workers the highest paid earn fifty times the amount of the lowest paid.²⁶ Much higher incomes are received by eminent engineers, scientists, writers, and actors. As noted previously, outstanding workers receive special priorities for housing and consumers' goods.

Housing. The housing situation in the Soviet Union has always been well below Western European standards. Increasing population and the emphasis on other aspects of the economy has resulted in very meagre provision of housing for all but the favored few. War destruction made matters worse, and despite the emphasis given to house construction by the fourth FYP it is still less adequate than in the early postrevolutionary period. Nearly all housing construction is in the form of large apartment blocks and the Soviet press deplores the "individualistic" tendency of the small well-to-do class to build private houses in the outskirts of cities. This has not discouraged the tendency nor is it officially disapproved by the government which, since the Second World War, has made long-term loans to individuals for private house construction. Nevertheless, nearly all Soviet citizens, except the peasants who still live in village log houses, must dwell in crowded city flats with a single toilet to serve several families. Rents are low by our standards and are based upon the number of square meters occupied plus additional charges for any facilities. A further additional charge is made if the tenant's earnings exceed a specified minimum.

Medical facilities. Medical attention is free for all citizens regardless of income, but the qualified physicians are relatively few and the hospital accommodation scarce by our standards. In rural areas semitrained physicians called *Feldshers* are still used because there are not enough medical doctors to

²⁵ According to former Ambassador Walter Bedell Smith, a Soviet workman in 1947 had to work an average of nearly five hours to earn a dozen eggs and 104½ hours for a pair of shoes, as compared with the American average of thirty-eight minutes for the eggs and seven hours and a quarter for the shoes. See "My Three Years in Moscow," *New York Times*, November 14, 1949.

²⁶ H. Schwartz, *Russia's Soviet Economy* (New York, 1950), pp. 465-466.

do the work. It should be remembered, however, that Russian demands and standards in such matters are lower than ours. The well-to-do frequently prefer to employ physicians privately for a fee, instead of using the free clinics.

Services. Laundry, cleaning and pressing, shoe repairs, and other such services, performed by small private enterprise in capitalist countries, are monopolized by municipally paid coöperatives in Soviet cities. The poor quality of the service and workmanship is a frequent source of criticism in the local press. Many people make private arrangements for these services when they can do so, sometimes with employees of the authorized "artel" (coöperative) who will enlarge their incomes by spare-time work for a fee. There are relatively few private automobiles in the Soviet Union, although their use is increasing gradually. For those who own a car, repairs present difficulties because of the scarcity of service stations and garage mechanics.

Retail stores. There are few retail stores in relation to the population, partly because competition has been eliminated. Actually there are so few as to cause great inconvenience to the customers. The United States has many times the number of stores for a population one-fifth smaller. In Moscow there is one particularly excellent and well-stocked department store and there are some other good stores as well, but most are poorly managed and cared for. Many are dirty and so carelessly stocked that they are nearly useless. A typical complaint in letters to the newspapers is that no attention is paid to seasonal demand. With the onset of winter, the local store may have plenty of tennis sneakers but no felt overshoes. This can easily be understood in view of the absence of competition, the bureaucratic control, and the lack of attention paid to the consumption side of the Soviet economy.

There are two kinds of retail establishments—the state stores and consumers' coöperatives. Prices are all fixed and there is no competition between the two kinds of stores. In addition there are markets in which the collective farmers may sell some of their private produce, and which also have producers' coöperative shops and stalls as well as markets like the "Bird Market" in Moscow where everything from goldfish to second-hand cars may be purchased. There is always a certain amount of "black market" activity too, in goods which have been diverted illegally from authorized trade channels.

The family. At the start of the régime it was current Communist dogma to decry the "bourgeois" family as part of the capitalist "superstructure." Women would be freed to enter all professions and trades on a basis of complete equality with men. Marriage could be dissolved at the whim of either partner and with a minimum of expense and formality. "Free love" was not frowned upon and illegitimate children were to suffer no discrimination. The state even supported free abortion clinics. Some Soviet citizens abandoned all pre-

tense of sexual morality and were severely condemned by Lenin for their licentiousness. There were others among the party command who supported the casual attitude toward family ties, but gradually the official line changed; by the mid-thirties the divorce laws were tightened, and in 1936 the abortion clinics were closed and abortion was made illegal. Later, casual unions were deprived of the legal protection accorded formal marriage, special allowances were provided for large families, and every effort was made to restore the permanent family as a Soviet institution. In education, in many urban secondary schools, coeducation was replaced by the separation of the sexes as in tsarist times. Girls were given training more suitable for a career as wife and mother than as preparation for professional work. This renewed insistence upon the old-fashioned family and sexual morality aroused some resentment among Soviet youth. Nevertheless, the government has persisted in its policy and has acted only to render divorce more difficult.²⁷

Education. All Soviet children are supposed to have schooling between the ages of eight and fifteen.²⁸ Although education is handled legally on a republic basis, all republics have precisely the same curricula and system. This uniformity is assured by the special interest taken in education by the Communist party, whose central committee has issued a number of important educational decrees. At the age of fifteen (unless already drafted for compulsory labor) the Soviet youth will enter industry as a worker or trainee, enroll in a technical school for training in industrial skills, or continue with secondary schooling in preparation for a professional university course. This last alternative is open only to those who can obtain a scholarship or who can afford the fees which are well beyond the means of the ordinary workman. In addition, a high academic average is required.

As in all totalitarian states, education has two purposes: the fitting of the individual for a useful career and his thorough indoctrination with the ideas and ideals of the régime. The ancient goal of a liberal education, to free the mind from prejudice and enable it to think independently, is totally abandoned. A claim of omniscience and the possession of all truth is incompatible with the toleration of opposing opinion. In the secondary schools and universities the social sciences have been reduced to variations upon the theme of Marxism-Leninism. *Politprosvet* (political education) is found in all curricula and at every level of education. In every school year there is at least one required course in party history, Marxism-Leninism, or some such subject. Naturally, only the official view is taught and tolerated. Whenever possible, in courses

²⁷ For a full account, see Rudolf Schlesinger, *Changing Attitudes in Soviet Russia: the Family* (London, 1949).

²⁸ This was lowered to fourteen as a war measure. In rural areas only four years of schooling are compulsory.

outside of the social sciences, the appropriate Marxist moral is drawn. Accordingly, not only Komsomols and party members, but all Soviet citizens are exposed throughout their entire educational careers to a steady insistence upon a single view of human society which must be accepted with unquestioning faith. Patriotism, too, is stressed from the primary level onward, reinforced by the insistence not only upon the superiority of Soviet socialism but of all things Russian. The non-Communist world is pictured as jealous and aggressive.²⁹ At the same time the schools strongly emphasize literature and include not only the Russian classics but a good many French, English, and German authors, as well as some Americans. This may well provide a more rounded view of the world and of history than is presented in the social science classes.

As in other fields, the semianarchist tendency of "left" Communism led in the early days to a reform of education in which the self-government of the pupils was stressed. The teachers often found it impossible to preserve order and discipline. Gradually their authority was restored and now even the school uniform, reminiscent of tsarist days, has been resurrected. The rigid discipline of tsarist schools seems to have been revived as well, with severe punishments for infractions.

Despite the ideal of universal education, the Soviet school system has never managed to provide it. Some areas lack schools and almost half the child population fails to attend beyond the fourth grade. About 3 per cent complete secondary schooling. There is a chronic teacher shortage, one reason for which may be the fact that teachers earn, on the average, less than industrial workers.

Religion. Possibly the best-known feature of early Bolshevism was its savage attack upon religion and its sponsorship of militant atheism. At times the campaign included physical attacks upon priests and destruction of churches. Today, although a bitter conflict with the Roman Catholic Church still rages in the "People's Democracies," within Russia itself peace has been made with the Orthodox Russian Church. Of the original tendency there remains little but the ban on religious affiliation which applies to all members of the Communist party. The change came about with the emphasis upon Russian patriotism under Stalin and the discovery that the Orthodox Church could be useful in stimulating patriotic sentiment. It was and is essentially a *national* church without the suspect international affiliations of other religions. When the Orthodox partriarchs pledged full support of the government at the outset of the "patriotic war," the latter responded by suspending the antireligious publications. Even before this time the government had tolerated public religious

²⁹ See Frederick C. Barghorn, *The Soviet Image of the United States; A Study in Distortion* (New York, 1950).

observances and even permitted the continued existence of seminaries for the training of the clergy. Evidently Stalin had abandoned the attempt to destroy religion by sudden and violent means in the face of its strong hold upon millions of his subjects. He chose instead to rely upon the long-run effects of antireligious doctrines as taught in the schools and youth organizations. In 1943 a council was set up under the council of ministers to oversee the Orthodox Church, and in the following year a similar council was created for other religions. The Holy Synod was revived with Stalin's assent. Accordingly, religious institutions have become an accepted element of Soviet society, for the time being at any rate.

Intellectual slavery. The motto of the British Royal Society, the earliest of the great scientific bodies, is *Nullius in Verba*, which may be translated roughly as "Nothing on Authority." All Scientific progress has been achieved by a willingness to question authority, to test and retest old theories in the light of available evidence, and to abandon them when they fail to explain the experiments. In the Soviet Union this attitude has been abandoned for a mediaeval, religious approach. The authority of an inspired church has been taken over by the Communist party and the dictatorship. The clearest case is in the field of biology. The ancient Lamarckian hypothesis, that acquired characters are inherited, formed before anything was known about genetics, has been revived as the official dogma of the party. Its main proponent, Lysenko, was advanced to high position and the genuinely scientific Russian biologists dismissed from their posts. The case of the biologists attracted much attention when it was publicized in 1948, but it is merely one example of the discipline imposed upon scientific workers in all fields.

Why has the high command acted thus to put a strait-jacket upon science? In the end this limitation is bound to affect Soviet scientific progress adversely. Applied science cannot advance without the progress of pure science and the latter must be free to follow the facts wherever they lead. It seems reasonable to suppose that there are several motives underlying this official thought-control. In the first place, it represents an effort to turn Russian science away from pure research to attacks upon problems in applied science. Possibly the party chiefs are not completely aware of the close relationship between the two or in any case think that practical applications are the urgent need of the moment. Secondly, the dictatorship fears, quite rightly, the truly scientific, inquiring mind. Science is greatly admired and respected in the Soviet Union. How important, then, to make sure that the scientists do not become "rotten individualists" with more respect for facts than for authority. Science, above all, must be made to fit into the dogmas of Marxism-Leninism-Stalinism.³⁰

³⁰ For an account of official Soviet biology see Trofim Lysenko, *The Science of Biology Today* (New York, 1949). There have been numerous articles by Western biologists attacking Lysenko's theories. After Stalin's death Lysenko fell from favor and was ousted.

Literature. Literature, too, is directed primarily to the improvement rather than to the entertainment or enlightenment of the reader. Contemporary authors in the Soviet Union are careful to point a moral. Their novels, stories, and plays are a sort of Marxist version of the pious tales by minor writers that abounded in the Victorian era. The party watch-dogs are always ready to attack writers they consider frivolous and nonpolitical.

Painting and music are also under control. Here the rather unsophisticated taste of the party leaders seems to be the criterion. Soviet painting today is of the hackneyed late nineteenth-century style. The most eminent of Soviet musicians whose works received international acclaim have been attacked as guilty of "formalism," whatever that may mean.³¹ All have duly repented and have thanked their critics for much needed advice! However, it is reported that since Stalin's death some of the controls over artistic expression have been relaxed.

The press. The Soviet Union has no lack of periodicals. Some thousands of newspapers and hundreds of magazines are published. Many, of course, are local, or appeal to some special interest. The voice of the Kremlin is *Pravda*, the organ of the central committee of the Communist party. It is the most authoritative of all and often signals a shift in official attitudes and policies. *Izvestia*³² is the organ of the government and is almost as authoritative as *Pravda*. Nearly all the papers depend upon *Tass*, the official news agency, for their general news. All papers, of course, reflect faithfully the party line of the moment. When the Hitler-Stalin pact was signed in 1939 they instantly ceased their violent attacks upon Nazism. Naturally they do not print news that the government considers undesirable. During the struggle with the kulaks and the famine of the thirties in the Ukraine there was no word of food shortages in the press. It is only by reading between the lines and by noting what the papers do not contain, such as the sudden disappearance from the news columns of a hitherto prominent figure, that one can guess about the politics of the high command, and speculate as to the rise and fall of highly placed members.

Conclusion. Altogether the Soviet citizen has a rather cramped existence, according to our standards. He works long hours for miserable wages unless he belongs to the ruling group or the favored few in the arts, sciences, and professions. His housing is almost certainly inadequate and he has had to become used to low standards of service of all kinds. On the other hand, his level of expectation is low and he is inclined to believe the reiterated claims of his press and radio which assure him that he is far better off than the people in

³¹ It seems to mean atonal music in imitation of "bourgeois modernism." See the quotation from an article by N. Y. Brusova in *Soviet Music*, translated and quoted by Alexander Werth, "The Dilemma of Soviet Artists," *The Nation*, August 21, 1948, 207 ff.

³² *Pravda* means "truth" and *Izvestia* means "news." There is an old joke among Russians unsympathetic to the regime, that *Izvestia* contains no *Pravda* and *Pravda* no *Izvestia*.

less fortunate lands. He has no intellectual freedom but he has no tradition of such freedom. Anarchy and absolutism are the only states he has ever known. Perhaps he would prefer anarchy in certain respects, but failing that, absolutism is satisfactory enough. His resentments he is free to express by attacking the bureaucrats who fail to do their jobs properly. Occasionally he may even enjoy the disgrace and downfall of the mighty at one of the great "purge" trials. He does enjoy social and economic security without fear of unemployment, even though his living standards are low. His disenchantment with red socialism is probably more complete if he is a peasant, but here his rebellion is likely to be confined to shirking his tasks on the collective and spending his efforts on his own plot. Political action is out of the question.

So long as he occupies a humble place, has proletarian antecedents, and is outwardly loyal and obedient to the dictatorship, he has little to fear. If he achieves a position of responsibility either within the party or otherwise, he is in a more precarious situation. The failure of his subordinates to meet planned goals, or his own deviation from the correct attitudes as laid down by the central committee, may have serious consequences, the least of which is likely to be dismissal from his post. The higher his place, the more dangerous his situation and the greater the necessity for avoiding any suspicion of a difference with the party high command. Even humble folk are not really safe if they fall into one of several categories. Dictatorships are terribly sensitive to opposition and the Soviet plan has always been to remove from circulation as many as possible of all potential enemies of the régime before they have had any chance to act. Accordingly, the MVD has long lists of "security risks" including all of bourgeois or kulak background, relatives of persons convicted of disloyalty, people who are known to have foreign connections, members of suspect national groups (such as the Crimean Tartars, Volga Germans, and the like) who have been adjudged guilty of general disaffection, and many others. Such persons may be left alone for years and never be guilty of anything nor even suspect that they are on a police list. But when, in the Kremlin's view, it is a good idea to place them out of harm's way, they are arrested and packed off to one of the forced labor camps or establishments.

The false assumption. The tragic question remains: Why did a régime founded upon a great ideal, the free, unforced coöperation of all men for the benefit of all, degenerate so rapidly into a police state relying chiefly upon force and fear to secure obedience to its dictates? May it not be that the ideal could not be realized because based upon a false assumption—that all social ills derive from the private ownership of the means of production? If this assumption were valid, then socialism would indeed have ushered in an earthly paradise. In reality, however, the earthly paradise remained a distant dream

and its sponsors found themselves taking over all the instruments of state control, hitherto denounced as the tools of the exploiting class. They had to do this in order to remain in power, and their power was more absolute than that of the tsars they replaced, for they now held all economic as well as all political authority. No rival foci of influence or power were permitted to develop, nor logically could be permitted, for the tsars of communism held themselves to be the true and only representatives of the entire community. To resist or oppose them was antisocial activity, not merely political opposition. Such action was treason not only against the Soviet government but against all humanity. In other words, what emerged from the Russian revolution was another absolutism. Its slogans were different; many of its policies were affected by the Marxist creed its leaders professed; but essentially its rule has been like that of the more ambitious and successful despots of the past. It was no inconsistency on Stalin's part that led to the revival of Ivan the Terrible as a hero of the Soviet state. As far as the individual citizen is concerned, the chief difference between the ancient and modern despotisms would seem to be that the latter pays more attention to social services and that its political police is more efficient.

Soviet Economics. The best recent book on this topic is Harry Schwartz, *Russia's Soviet Economy* (New York, 1950). Also useful are Aron Yugov, *Russia's Economic Front for War and Peace; An Appraisal of the Three Five-Year Plans* (New York, 1942), and Alexander Baykov, *The Development of the Soviet Economic System* (Cambridge, Mass., 1946). Specialized studies include Gregory Bienstock, Solomon Schwartz, and Aron Yugov, *Management in Russian Industry and Agriculture* (New York, 1945); Margaret Miller, *Labour in the U.S.S.R.* (London, 1942); I. Deutscher, *Soviet Trade Unions* (London, 1950); Abram Bergson, *The Structure of Soviet Wages* (Cambridge, Mass., 1944); and Arthur Z. Arnold, *Banks, Credit and Money in Soviet Russia* (New York, 1937). Professor Arnold's book is still the best in its field despite its date.

A description displaying pro-Soviet bias but otherwise useful is Maurice Dobb, *Soviet Economic Development since 1917* (London, 1948). First-hand accounts of Soviet industry are given in John D. Littlepage and Demaree Bess, *In Search of Soviet Gold* (London, 1939); John Scott, *Behind the Urals: An American Worker in Russia's City of Steel* (London, 1942); and Peter Francis, *I Worked in a Soviet Factory* (London, 1939). An analysis by a former Russian Social Revolutionary is Manya Gordon, *Workers before and after Lenin* (New York, 1941). See also Solomon M. Schwarz, *Labor in the Soviet Union* (New York, 1952). Agriculture is treated in several of the above works but more thoroughly in Naum Jasny, *The Socialized Agriculture of the U.S.S.R.* (Stanford, 1949.) Attention should also be called to Lazar Volin, *A Survey of Soviet Russian Agriculture* (Washington, 1951). Highly useful for social and economic commentary is the British quarterly, *Soviet Studies*, edited at the University of Glasgow.

Soviet Education. A number of books have been published on the Russian educational system. Among these are Samuel Harper, *Civil Training in Russia* (Chicago, 1929); Albert P. Pinkevich, *Science and Education in the U.S.S.R.* (New York, 1935); and Maurice J. Shore, *Soviet Education: Its Psychology and Philosophy* (New York, 1947). Revealing excerpts from Soviet textbooks may be found in M. Ilin, *Moscow Has a Plan: A Soviet Primer*, translated by George N. Counts and Nucia P. Lodge (London, 1934), and Boris P. Yesipov and N. K. Goncharow, *I Want to Be like Stalin*, also translated by Counts and Lodge (New York, 1947).

Daily life in Russia has been described by many correspondents and others. An interesting account is that given by John Lawrence, *Life in Russia* (London, 1947).

CHAPTER XLIII

The “People’s Democracies”

We must control everyone, everywhere.—Premier Antonin Zapotocky of Czechoslovakia addressing the National Congress of the Czechoslovakian Communist party, 1953

The reader will recall that Russia has grown steadily, since the days of the Grand Dukes of Moscow, by expanding her borders. With the exception of the disastrous war with Japan and the launching of the First World War, this has never involved attacks upon powerful countries but rather the absorption of weaker neighbors when this could be done without involvement in a general war. The tsar’s conquests were often less than complete, however, in that the conquered peoples (Finns, Balts, and Poles, for example) remained conscious nationalities, united in their hatred of the Russian overlords. At first opportunity they tried to cast off the Russian yoke. Attempts at forced Russification only made matters worse.

The Soviet Union had its first grand opportunity during and after the Second World War to carry forward the old Russian program of strategic expansion. But now there was a new psychological weapon available to the Russian conquerors. This time they were “liberating” neighbor peoples from the chains of capitalism and uniting them with the Soviet Union, not as subjugated territories, but as partners in the association of socialist states under their native Communist leaders. The actions necessary to bring about this state of affairs could be arranged in most cases without the direct and open use of Russian force except in the early occupation stage and could be made to resemble spontaneous internal movements. This had the double advantage of forestalling objections by the other great powers to the extension of Russian control, while at the same time the appearance of independence was preserved and native nationalism, instead of being suppressed, could be used for a time by the Communist leaders. Just as Russia proper, the RSFSR, is surrounded by a ring of soviet republics, so these in turn are now bordered by an outer layer

of "people's democracies,"¹ not integrated formally into the USSR, but controlled by local Communist party dictatorships which are subject to direction from Moscow. The scheme has worked with complete success in every instance but one. The Communist party of Yugoslavia, for reasons to be noted later, was able to maintain its independence of Russian dictation.

THE EARLIEST STAGE

The technique of establishing a "people's democracy." The first stage in all these countries,² under the auspices of the occupying powers, was to set up a coalition government including all parties not stained by fascism. These coalitions, usually known as a National or Democratic Front, included everything from the Communist to conservative groups. In all cases the Communists were a minority of the whole. At this stage the prime minister was never a Communist and his government was a genuine coalition.

The next step always involved the destruction of the most important non-Communist parties by a variety of means. Strong democratic leaders, not open to intimidation, were discredited by involvement in alleged scandals or plots; new parties were created with names similar to existing genuine parties to attract the unsuspecting, and these were secretly Communist-dominated. This device was used especially against the old peasant parties and their leadership.

At the correct moment a disciplined People's Front party alliance would be established under Communist domination. The social democrat and peasant parties would be forced to join this alliance or be attacked so vigorously as to force their leaders into flight or imprisonment and their members into subservience or secret opposition. Sometimes a certain amount of ostensible opposition would be tolerated for the sake of appearances but always under strict limitations.

Once the foregoing aims had been accomplished it would then be possible to go ahead with the consolidation of the dictatorship. Elections would now be held, so controlled as to demonstrate the total popularity of the Communist party and its affiliates. A "democratic" constitution would be adopted outlawing all independent parties. The enlarged and carefully screened security police would by this time be able to oversee the extension of effective controls into all important aspects of the economy and daily life, including banking, food supply, transport, press, radio, education, and so on. In every country peasant resistance was encountered and the answer in every case was the forced col-

¹ The term "people's democracy" was defined by the late George Dimitroff (former head of the Comintern and subsequently powerful in the Cominform) as representing a transitional stage between capitalism and socialism—really another name for "dictatorship of the proletariat." It differs from the latter only in the retention of a parliamentary instead of the soviet form of government.

² Rumania, Hungary, Bulgaria, Yugoslavia, Poland, Czechoslovakia, and East Germany.

lectivization of agriculture. In every country, also, the local nationalism of some Communists and others has led to extensive purges. In every country the Russian techniques for the control of industrial workers and the punishments and rewards to enlarge production have been employed.

Local government. The fundamental laws of the people's democracies have little to say about local government, its functions and powers. Generally speaking, this plan is followed: The voters of each district and municipality elect a committee which constitutes the local government insofar as there is one. The principal function of this committee is not to make autonomous decisions in local matters but to make sure that administrative officials carry out properly the directives of the central government. Some administrative functions are entrusted to the committee chairman who is responsible not only to his committee but also to the higher authorities. As in the Soviet Union, the chief purpose of the local government committees seems to be to enlist popular support for the regime by giving a large number of citizens an ostensible share in administration and to enlist their aid in keeping a strict watch over officials to catch deviations from national policy.

It would be repetitive to recount in great detail the history and political arrangements of all of the "people's democracies," but individual accounts of some of them may serve to exemplify the pattern of strategy described above.

Czechoslovakia. The Czechoslovak Republic was, in many ways, the most developed democracy in Central Europe. The Communist party was small before 1939, the various democratic political parties were firmly rooted in the electorate, a high degree of personal and political freedom obtained, and the ways of the Western democracies were far more attractive to the people than those of the Soviet Union. When the German armies rolled in, Benes, the head of the government, fled to London and organized the Czech government-in-exile. The end of the war saw Russian troops occupying his country and Benes flew to Moscow to negotiate the conditions for re-establishing a Czech government in Prague. He had no choice but to accept Russian terms, as otherwise he and his colleagues would have had to remain in exile.³

By these arrangements the country was to be divided into "operational" zones under Red army rule and "rear" zones where the government would be in charge of "administrative delegations" named by the government-in-exile. These were to contain representatives of the five chief parties, including the Communist party. The Red army and Soviet government at once ignored these arrangements, annexed Ruthenia,⁴ and set up "national committees" elsewhere

³ For a detailed account of postwar politics in Czechoslovakia see the articles by Ivo Duchacek, "The Strategy of Communist Infiltration: Czechoslovakia—1944-48," and "The February Coup in Czechoslovakia," *World Politics*, II 3, 4 (April and July, 1950).

⁴ The Czech government was afraid to protest about this lest the Soviet discover a "spontaneous popular demand" for the annexation of Slovakia by the Soviets.

which were under Communist control and had charge of affairs before the "administrative delegations" had even arrived on the scene. The overwhelming power of the Red army, the close coöperation between the local Communists and the MVD agents, and the helplessness of the democratic parties all conspired to strengthen Communist control. Many non-Communists were intimidated into accepting Communist leadership and voting for Communist candidates. Some did so to try to protect themselves against reprisals for their doubtful patriotism during the German occupation. In the outcome the Communist party, largely in control of local police and agricultural departments,⁵ was able to secure about 38 per cent of the popular vote in the elections of May, 1946.

Well supplied with funds, through their control of the disposition of enemy property and the heavy fees derived from their growing membership, the Communist leaders then organized infiltration into almost every organization in the country. They transformed the old Nazi labor front into a central labor union combining industrial and white-collar workers under Communist leadership. Two ministries only were taken by Communists. These were interior and agriculture. The latter was able to win many peasant votes for the party by its promises.⁶ The control of interior enabled a purge of the police to assure Communist domination. The premier, Zdanek Fierlinger, was the leader of the Social Democrats, but a reliable fellow-traveler. The Communists preferred that he should have the premiership because it helped to conceal from foreign eyes the extent of their power. Furthermore, they were very anxious to court the Social Democrats, many of whom were uneasy about the alliance, and whose votes were needed to assure Marxist control of parliament.⁷

As late as the beginning of 1947 the Communist line seemed to be to rely upon persuasion rather than crude force to win complete control of the government. They had infiltrated many organizations, had nearly complete control of labor, and many have felt that time was on their side. However, by the fall of 1947 things were not going so well. The Soviet Union was worried by Tito; the outlying redoubts of the union seemed less secure than formerly. The Marshall Plan was a worry, and within Czechoslovakia there was evidence that the Marxist tide was receding. The university student elections,⁸ fought on national party lines, saw the non-Marxist candidates win 75 per cent of the

⁵ The significance of the agricultural departments was that they handled the disposition of former enemy properties and so could reward their friends and divert some assets to the party coffers.

⁶ In the words of a non-Communist politician, the peasants voted "for fertilizers" rather than "for the philosophical heritage of Thomas Masaryk." (Duchacek, in the article cited above, p. 364.)

⁷ The elections of May, 1946, resulted in 114 Communist members, 39 Social Democrats, and 147 others. Thus, with Social Democrat support, the Communists had a majority of six votes.

⁸ Held at the famous and ancient Charles University in Prague.

votes. The ministry of information estimated a drop of 10 to 15 per cent in Communist votes at the next election. It took direct intervention by Moscow to prevent the Czech government from sending observers to the Marshall Plan talks. Further, the Communists had made the error of not demanding the ministry of justice and the latter was able to frustrate Communist plans to use violence against some of their enemies in high places, including Jan Masaryk and the minister of justice himself, Prokop Drtina. The Communists lost face over this incident but the atmosphere of tension mounted.

Within parliament, taxes were demanded by the Communists that would have ruined the middle class. Then in January, 1948, the central labor union and the peasants' union united to demand what amounted to a complete Communist economy. Meanwhile the minister of the interior continued to purge his police force. The Democrats now believed that their only chance was to force an election. They knew that if the Soviet Union intervened they were helpless in any case, but they thought that if, for reasons of international relations, the USSR chose to regard the election as a Czech domestic affair, they could defeat the Communists at the polls. They seem not to have been prepared for a coup d'état. On February 20, the minister of the interior was ordered by the government not to proceed with the appointment of eight Communists as police inspectors in the Prague district. As was expected, he ignored the order. Twelve ministers thereupon resigned in the belief that this would force an election.

The Communists had already arranged for mass conventions of the central labor and peasant unions in Prague during the last week in February. The members of these unions had been inflamed by Communist agitators to a near-revolutionary spirit. A "workers' militia" was organized and the citizens of Prague were startled one morning to find the streets patrolled by civilians armed with rifles and submachine guns, evidently with police approval. Parades of workmen were organized to stimulate mass enthusiasm and to frighten the opposition. Only the university students dared to organize counterparades of their own. Previously organized Communist "action committees" took over all administrative agencies of the government backed by police and workers' militia. Once installed, they reorganized the personnel to ensure party control at all levels. The Communist leader, Clement Gottwald, became premier and replaced the resigned ministers by Communists. The appearance of a coalition government was retained by the continued presence in the government of a few reliable fellow-travelers of other parties, although the National Front label was replaced by that of the central action committee. "Action committees" were formed inside the old political parties as well, in order to purge the leadership if it failed to obey Communist orders. Meanwhile the coördination of all media

of communication was completed and a purge of non-Communists carried out in industry. No non-Communist point of view could find any public expression. Under these circumstances, with the non-Communist opposition cowed and unorganized and with the ever-present shadow of the Red army at the frontiers,⁹ the old and ailing Benes gave way on February 25 and accepted the Communist draft of a new constitution setting up the customary crypto-dictatorship. Had he chosen instead to call out the army and rely upon its loyalty to the legitimate government it is hard to say what might have happened. As yet the army had not been purged to any great extent by the Communists and most of it might have been loyal. However, the horrors of civil war and the probability of Red army intervention may well have induced Benes to give way.

Thenceforward the familiar pattern of Communist dictatorship was unfolded. A rigged election was held in May with a joint election list.¹⁰ The censorship of all books was announced in November, 1948—a particularly shocking thing in a country hitherto remarkable for its omnivorous readers and its complete freedom from censorship. By 1949 the Communist leaders were ready to attack the important middle class by nationalizing many small firms and imprisoning thousands, without trial, in forced labor camps. Subsequently, throughout 1951, the party itself was purged in the usual Communist fashion, proving scapegoats for popular unrest and for the failure to realize the industrial objectives set by the Soviet masters. The purges led to the expulsion of hundreds of thousands of party members including important personages.

In January, 1953, the Czech party held a national congress at which its basic organization was tightened. The following month the government was reorganized to provide for a presidium consisting of Premier Zapotocky and his deputies to make top policy decisions and control the ministers.

The establishment of a Communist dictatorship in Czechoslovakia has been recounted in some detail because it displayed the revolutionary techniques as used in a well-developed democracy. The reasons for Communist success seem plain enough after the event. Careful planning, firm policy, and ruthless execution characterized their behavior while their opponents were disorganized and felt isolated in the struggle. The later did not receive, nor in the geopolitical circumstances could receive, from the Western Allies the kind of support given the Communists by the USSR. Faced with this kind of opponent the

⁹ The implication of Soviet support for the coup was underlined by the presence in Prague just before it happened of V. A. Zorin, deputy foreign minister of the USSR.

¹⁰ At this election the Communists claimed to have received 89.2 per cent of the valid votes. For an account of the election see Margaret Mead, *Soviet Attitudes toward Authority* (New York, 1951); Appendix E by D. Rodnick, pp. 131-136.

democratic politician seemed paralyzed. He could not or would not resort to the tactics of conspiracy and force so foreign to his whole training and background. In extenuation of this seemingly weak behavior it must always be remembered that the determining factor may well have been the overwhelming might of the Red army poised on the frontier.

COMMUNISM IN THE BALKANS

Bulgaria. Unlike Czechoslovakia, Bulgaria had a strong Communist party and an even stronger traditional friendship with Russia. Hitler had never been able to get the Bulgars into the war on his side except nominally, although the Bulgarian partisans were not active in the resistance movement. Near the end of the war the Bulgarian government denounced its alliance with Hitler and declared war on Germany, while emissaries went to Cairo to secure armistice terms from the Western Allies. Instantly the USSR declared war on Bulgaria! This fantastic action was the excuse for the sudden occupation of the country by the Red army. At that time considerations of international politics led the other Allies to condone this action and permit the Russians to settle armistice terms.

The pattern of Communist conquest began according to the usual plan with the formation of a coalition government in September, 1944. This so-called Fatherland Front contained two Communist ministers in charge of the key portfolios of justice and interior. Thus in control of police and elections, the Fatherland Front won easily in the next elections held in November, 1945, to the accompaniment of intimidation by militia and police. Next, the non-Communist premier, Georgiev, was compelled to purge the army of some 1,800 officers considered unreliable by the Communists. Then came the attack on the Peasant party which culminated in the death sentence passed *in absentia* upon the party's leader and the actual execution of his successor in August, 1947.

Hungary. In Hungary, the Communist plan was somewhat slowed in its execution at first by the hampering presence of British and American co-occupation authorities. But the plan was neither abandoned nor even modified. Because of the triple occupation, however, the first elections after the war (November, 1945) were actually free. The mildly leftist Small Landholders' party achieved an absolute majority, receiving 57 per cent of the vote, while the Communists got only 17 per cent. Nevertheless, by securing the adherence of many Social Democrats, the Communists were able to force their way into the government, and with the aid of the Soviet occupation authorities, bring effective pressure to bear upon it. A series of "plots" were uncovered by the political police, whose head was Peter Gabor, a Communist. These were alleged

to implicate a number of parliamentary members of the Small Landholders' party, and the premier, Ferenč Nagy, felt compelled to permit their expulsion. When the premier balked at permitting the arrest of Bela Kovacs, the secretary of the Small Landholders' party, the arrest was made by Red army troops. Further expulsions from parliament put the premier's party in the minority. The Communists were now able to manage the elections which were held in August, 1947, and returned a Communist majority. Thereafter all pretense of democracy disappeared and the usual arrest of non-Communist leaders took place.

Rumania. Here again the first postwar coalition government saw Communist ministers in charge of justice and interior. Direct Russian intervention and pressure led to the replacement of a non-Communist by a fellow-traveler premier, Petru Groza. Other parliamentary leaders were forced into exile or arrested, and the elections of November, 1946, were held under the usual conditions of fraud, force, and fear. The coalition was permitted to remain in power for a time, however, possibly because of the near-famine conditions which may have induced the Communist leadership to wait until conditions were improving before taking over completely. By the next election, in March, 1948, the Communists were virtually unopposed and they received the customary near-unanimous approval of the electorate. A curious fact about Rumania is that its "Communist" leaders include an astonishing number of ex-fascists who had been equally prominent in the days of the fascist Iron Guard.

THE TITO SECESSION

Yugoslavia. The only really effective irregular fighting against the German conquerors in Eastern Europe had taken place in Greece and Yugoslavia. In the latter country the situation was complicated by the existence of two partisan groups bitterly opposed to each other. First in the field were Mihailovitch and his Chetniks. They represented a traditional, conservative, and primarily Serb point of view. Later the partisans led by the Communist Josip Broz, better known as "Tito," became celebrated for their successful attacks upon the occupying forces. Something like a civil war took place between the two Yugoslav organizations and both were charged with coming to temporary understandings with the common enemy in the course of this struggle. Tito was given Allied support and emerged at the close of the war with a strong national army, the unquestioned master of Yugoslavia.¹¹ Because of this, and because there was no other effective government in the country, Tito was able to reach the one-party or monolithic stage of a "people's" democracy" by 1945.

¹¹ For an account of the reasons for throwing British and American support to Tito rather than to Mihailovitch, see Winston Churchill, *The Second World War*, Vol. V., *Closing the Ring*.

Tito was a Communist and the leader of the Yugoslav Communist party. During and after the war he received aid from the Soviet Union and there was no reason to suppose that he would behave differently from the other Moscow-trained leaders in the Balkans. However, as early as 1945 he gave evidence of unusual independence and did not recant when called to task by Moscow. Nevertheless, it was not until 1948 that the break became final. The defection of Yugoslavia would leave a great gap in the iron ring of satellites and the Russians made every effort to retain Tito's loyalty. When the Cominform was established in 1947 its headquarters were set up in Belgrade, presumably to bring additional pressure to bear upon Tito, who would find himself constantly associating with loyal Communist leaders from other countries. Early in 1948 the Soviet experts and advisers were all recalled from Yugoslavia and when Tito inquired about this he was told that the Russians had been treated like spies, constantly supervised by Yugoslav police, and that Tito and his party were guilty of something approaching treason to the Communist ideal. Tito redeclared his friendship for the Soviet Union but continued adamant in his refusal to accept Russian dictation on policy. Subsequent purges of high officials of his own party would seem to indicate that the Russians were organizing an anti-Tito movement within it. But Tito had his own loyal political police and was able to forestall such moves. Tito is the first successful exponent of national communism as contrasted with the international or Russian imperialist brand. The violence of the attack upon Tito and Titoism launched by the Soviet Union is easy to understand. Were such ideas to spread, the Soviet plan of world communism under Soviet domination would be endangered.

Yugoslavia's domestic policies differ in no important respect from those of other "people's" democracies." Occasional hints that the dictatorship there may be more benevolent and less doctrinaire than those of other Communist states represent differences in the speed of socialization rather than any essential difference in kind. There is no evidence that Tito's government tolerates or intends to tolerate any opposition.¹² It is Tito's contention, however, that he and his party are unique among Communist regimes in their "grass-roots" contacts. This, together with his unyielding nationalism, has done much to win him a degree of respect even from non-Communist elements. Yugoslavia's foreign policy has led, of necessity, to an acceptance of the capitalist states as

¹² During 1950 there was some relaxation in terroristic activities. It was announced, also, that "workers' councils," elected in each factory, should have some say in management. Further, "citizens' councils" were to be set up to participate in local government alongside and even superior to the "people's committees" which are the agents of the Communist party. Another announced reform was to restore to the courts the powers usurped by the political police. No evidence exists, however, that these reforms have permitted or were intended to permit the development of a legal political opposition.

something other than the implacable enemies they are supposed to be, according to Leninist doctrine. This has produced renewed discussion of the relationship between socialist and capitalist countries and might conceivably lead to some modification of Leninism on the point.

Yugoslavia is a peasant country and here, as in Russia, the biggest domestic problem has been to secure peasant coöperation with the government and its farm collectivization program. This had been pushed faster than in any other "people's democracy"¹³ and led to peasant opposition expressing itself in a slow-down policy in planting and harvesting. But the peasants have won some concessions. Crop controls were lifted early in 1951 on all crops except bread grains and fats. Not long afterward controls were lifted on lard and olive oil. This means that such products may be sold in the free market instead of delivered to the government at a low fixed price. Subsequently the government indicated that it intended to abandon the Russian type of collective farm in favor of coöperatives of the "general" kind which existed before the war.

ECONOMIC RELATIONS

The Soviet reply to the Marshall Plan has been the establishing of a Council for Economic Mutual Assistance, including the USSR, Bulgaria, Poland, Czechoslovakia, Hungary, and Rumania. This was announced on January 25, 1949. It would seem that the new organization represented little more than a formal façade for the already existing economic ties which bound the "iron curtain" countries to the USSR. By the new agreements the satellites made formal promises to export at least 75 per cent of their exportable products to the USSR. The Soviet Union receives oil from Rumania, for example, and sells some of it to Czechoslovakia. Prices are fixed by the Soviet Union, below world prices to Rumania and above world prices to the buyers. In this way the USSR not only profits enormously but also controls the trade completely and can exert such economic pressure on its satellites as may seem advisable. The Soviet Union also acts for the other countries in trading with the outside world, both in selling their products and in procuring the supplies they need.¹⁴ Intensive propaganda drives have been organized in all the countries to stimulate admiration and friendship for the Soviet Union and to encourage the study of Russian and the emulation of Russian examples in all fields of science, industry, art, and even sport.

Obviously all the above policies are intended to result in the virtual absorp-

¹³ Approximately 20 to 30 per cent of available land has been collectivized in Yugoslavia as compared with less than 20 per cent in Bulgaria, under 10 per cent in Hungary and Poland, and less than 5 per cent in Rumania and Czechoslovakia.

¹⁴ See the article by Dr. Nicholas Nyárádi, "Six Satellites and an Octopus," *The Reporter*, January, 1950.

tion of the satellites by the Soviet Union. Such freedom of action as they may retain in any respect is at the discretion of the Kremlin. The next stage, presumably, would be the "overwhelming demand" of the peoples for integration with the Soviet Union as member-republics, to be followed by the stimulation of further "people's democracies" on the new frontier.

In addition to the books and articles mentioned in the footnotes, the student may refer to W. H. Chamberlin, *The Strategy and Tactics of World Communism* (Washington, D. C., 1948); Ruth Fischer, *Stalin and German Communism* (Cambridge, Mass., 1948); and the exposé of methods in Douglas Hyde, former editor of the London *Daily Worker*, *The Answer to Communism* (London, 1949). For the new constitution of the Satellite States (with exception of Poland and Hungary) see A. J. Peaslee, *Constitutions of Nations* (3 vol., Concord, 1950). See also the following articles: H. H. Collins, "Constitutions of the Soviet Republics" in *Science and Society* (Winter, 1951); Z. Jedryka, "La Récente Réforme Constitutionnelle en Pologne" in *Revue Internationale de Droit Comparé* (October-December, 1952); V. Benes, "The New Legal System of Czechoslovakia" in *Journal of Central European Affairs* (October, 1952); Dolapchiev, N. "Law and Human Rights in Bulgaria" in *International Affairs* (January, 1953); Edward Taborsky, "Local Government in Czechoslovakia 1918-1948 in *American Slavic and East European Review* (October, 1951); and J. Djordjevic, "Local Self-Government in Yugoslavia" in *American Slavic and East European Review* (April, 1953). Attention should also be called to Andrew Gyorgy, *Governments of Danubian Europe* (New York, 1949). Hugh Seton-Watson, *The East European Revolution* (London, 1950); Otto Friedman, *The Break up of Czech Democracy* (London, 1950); Z. Kostelki, *The Yugoslavs* (New York, 1952); A. B. Ullam, *Titoism and the Cominform* (Cambridge, Mass., 1952); Joseph Kobbel, *Tito's Communism* (Denver, 1951); H. L. Roberts, *Rumania: Political Problems of an Agrarian State* (New Haven, 1951); and Gordon Shepherd, *Russia's Danubian Empire* (London, 1954).

Lesser Governments

CHAPTER XLIV

The Lesser Governments

Whatever crushes individuality is despotism, by whatever name it may be called.—John Stuart Mill

Real values in government. The major governments of Europe are not in all cases the most successful ones. As experience has shown, they are not necessarily the ones which have the greatest assurance of being permanent. Various factors combine to determine, in very large measure, not only the character of a government but the extent to which it will prove workable and enduring. One of these factors is geography. A nation's security against conquest, with the consequent overthrow of its government, has always been to some extent a matter of geography. England and Switzerland, one with her fringe of ocean and the other with her cordon of mountains, afford obvious examples. Natural resources have an influence in determining whether a country can become relatively self-sufficient and free from dependence upon its neighbors. Other factors include a stable society and a homogeneous people free to develop their political institutions gradually without the necessity of meeting recurrent internal crises. It is a temptation to consider race a factor and assume that the peoples of Western Europe have a near-monopoly of political genius. In actuality, however, this cannot be proved, although it is true that the world's great civilizations and political agglomerations have developed in the temperate zones.¹ It is also true that democracies have developed historically only among racially homogeneous peoples. Those nationalities whose people have lived together long enough to become a homogeneous stock, who have been well enough endowed by nature to render them independent of others for their livelihood, who have had the assistance of geography in maintaining their independence—these fortunates are the ones who

¹ An apparent exception is provided by Egypt and the North African Arab civilization. There is some evidence to indicate that the climate of North Africa was less extreme in the heyday of those civilizations. The same is true of the great Mayan civilization and empire in Central America.

have been able to develop their political institutions to their own satisfaction and to construct a stable political society.

The factors of tradition and size. It is also true that all social institutions, including the political, are the creatures of history. Governments everywhere are, to a large extent, in bondage to the past. Political ideals are an important element of the general social tradition. They are learned in infancy, implicit in every social institution, and dramatized in the myths that develop around national heroes. It is essential that both the structure and methods of government be adapted to fit these beliefs and ideals. Strong and viable national traditions can best develop in countries which have the conditions of safety, self-sufficiency, and homogeneity mentioned in the preceding paragraph, and are small and compact enough to be governed easily. For this reason, our study of foreign governments may well profit by the inclusion of some of the smaller and less important countries of Europe.

Some striking features of the lesser governments. In selecting a few lesser countries for this purpose one naturally thinks of Switzerland, one of the oldest, smallest, and best of the world's democracies. With its plural executive, its unique interpretation of the principle of ministerial responsibility, and its free use of direct legislation, the Helvetic Republic has illuminated both the science and the art of government. The Scandinavian kingdoms are also worth a glance from the student of comparative government because they display a smooth-working combination of limited monarchy, political democracy, and the "welfare state."

1. SWITZERLAND

Switzerland is in many ways the most interesting of these lesser political entities. "Among the modern democracies which are true democracies," Lord Bryce once said. "the Helvetic Republic has the highest claim to be studied. It contains a greater variety of institutions based on democratic principles than any other country. . . . The most interesting lesson Switzerland teaches is how traditions and institutions, taken together, may develop in the average man, to an extent never reached before, the qualities which make a good citizen—shrewdness, moderation, common sense and a sense of duty to the community. It is because this has come to pass in Switzerland that democracy is there more truly democratic than in any other country in the world."²

The land of the Swiss. Switzerland has about one-third the area of New York state, and about one-third the population. She is thus one of the smallest among European nations, wedged in between three of the largest and most powerful—France, Germany, and Italy. Her people live on both sides of a

² *Modern Democracies* (2 vols., New York, 1921), Vol. 1, p. 327.

great mountain chain, having spread themselves over the plateaus above and through the valleys below. People of Germanic, French, and Italian stocks, speaking four languages, have been so squeezed together by powerful neighbors that they have grown into one. The Swiss people have no single national language. A majority of them speak German, or, more accurately, *Schwyzerdütsch*, but in some parts of the country French is the predominant language, while in others Italian and Romansh³ are spoken by a considerable fraction of the people. Nor is there any uniformity of religious belief. Protestants dominate a majority of the cantons, while Catholics outnumber them in the rest.⁴ On the face of things, therefore, the Helvetic Republic lacks most of the cohesive forces which are commonly said to make for national solidarity—those which arise from community or race, language, and religion. Nevertheless, and in spite of all this, these 4,000,000 Swiss form a thoroughly coherent nation. They have behind them a tradition of self-government in some of the cantons extending back 600 years or more.

The neutrality of Switzerland, guaranteed by the Congress of Vienna in 1815 and reaffirmed by the League of Nations in 1920, was the anchor of the nation's foreign policy during both World Wars. During the earlier conflict, the sympathies of the people followed the lines of language but in no way affected their political behavior. During the Second World War, however, when the country was for a time completely encircled by a Nazi world, the Swiss realized that Hitlerized Europe would mean the extinction of their concept of government, so linguistic and cultural differences were eclipsed by the determination to resist pressure from whatever direction it might come. Both Nazi and Communist political organizations were suppressed in Switzerland, while considerable sacrifices were made to support the heavy costs of effective defense measures.⁵ Having to deal with both totalitarian and democratic powers, moreover, the Swiss leaders displayed a remarkable agility and coolness in walking the tightrope whose ends were held by the opposing forces. They were aided by several factors. It was highly useful to both sides to have

³ *Schwyzerdütsch*, which varies from canton to canton, is a Germanic dialect older than modern German. It is almost entirely a spoken language, although a few writers use it as Robert Burns did the Lowland Scottish dialect of English. The urban Swiss can, if they wish, speak standard German as well, although usually with a strong Swiss accent. German in one form or another is the language of more than 70 per cent of the Swiss, French of about 22 per cent, Italian of 5 per cent (almost confined to the Ticino) and Romansh (or Ladin) in a few valleys of the Grisons. The latter, an ancient dialect which combines Latin and German, is a national but not an official language. This means that it may be used in debates in parliament, but that all state documents are not required to be published in it as they must be in the case of the three chief languages.

⁴ Fortunately, in contrast with Canada, the language lines do not coincide with the religious division.

⁵ The Swiss army is a remarkable example of an effective nonprofessional, citizen force. For an interesting article about it see Charlotte Muret and Denis de Rougemont, "The Army of a Democracy, a Lesson from the Swiss," *Harper's Magazine*, Sept., 1941, 183, 337-346.

a neutral Switzerland. For the Western Allies it provided an espionage center and for the Germans and Japanese a convenient banking entrepôt as well as a source of much needed precision tools, chronometers, and other goods. Further, the Swiss sat astride the Rome-Berlin Axis and at the first aggressive move by Hitler, could blow up the railway tunnels, cutting direct overland contact between Germany and Italy. At the same time the Swiss afforded a welcome to refugees and were generous hosts to many of the unfortunate children who were the innocent casualties of war.

The Swiss federal constitution: its division of powers. The Helvetic Republic is a confederation of twenty-five cantons.⁶ There is a federal constitution, adopted in 1848 and considerably revised in 1874, which cannot be amended except by majority vote of the people and a majority of the cantons.⁷ Like the Constitution of the United States this constitution is a grant of powers, and the allocation of governmental jurisdiction between the federal and cantonal authorities is roughly similar to that in the United States. The federal government has control of foreign relations, but the constitution provides that the cantons (with the federal government's approval) may make certain agreements with foreign countries. The federal government has an exclusive right to send and receive diplomatic agents, to declare war and make peace, and to conclude treaties of an important nature. The Swiss military system, based upon universal training, is under its control. The federal government has control of the postal system; it operates the Swiss railroads (with a few minor exceptions) as well as the telegraph and telephone services. It has charge of the currency and has the exclusive right to issue paper money. It has control of banking and has power to regulate commerce including the power to levy customs duties, but it has no right to lay direct taxes upon the people. If it needs more revenue than it can obtain from indirect sources the federal government may levy upon the cantons in proportion to their wealth and taxable resources. It controls all available water power and has a monopoly in two fields of production, namely, explosives and alcohol. These are its exclusive powers.

In addition the Swiss federal government has various concurrent powers, that is, powers which it exercises in common with the cantons. Among these are powers relating to the regulation of industry and insurance, the construction and upkeep of highways, the control of the press, and the encouragement of

⁶ More accurately there are nineteen cantons and six half-cantons. The latter have cantonal governments of their own, but each has only one representative in the federal council, whereas the other cantons have two representatives. They vary greatly in population, from about 730,000 in Berne to a mere 14,000 in the half-canton of Appenzell-Inner-Rhoden.

⁷ An English translation is printed in W. E. Rappard *et al.*, *Source Book on European Governments* (New York, 1937), Part I, pp. 19-54.

education. When the federal government exercises a concurrent power, its laws prevail over those of a canton.

The Swiss federal parliament: 1. The upper chamber or Council of States. The Swiss federal government consists of a legislature, an executive, and a judiciary. The federal legislature is divided into two chambers known as the Council of States and the National Council. The Council of States seems at first glance to be almost an exact replica of the American Senate, for it contains two members from each regular canton and one from each half-canton—forty-four members in all. But the resemblance is only superficial. In the United States the Senators are elected by the people of the forty-eight states for six-year terms; in Switzerland the members of the upper chamber are chosen in such a manner and for such terms as each canton may decide. In some they are elected by the people of the canton, in others by the cantonal legislature. The terms vary from one year to four years. The two upper chambers, Swiss and American, are also quite unlike in their respective powers. The Senate of the United States has some highly important special prerogatives—the confirmation of appointments, the ratification of treaties, and the hearing of impeachments. The Swiss Council of States has no special powers of any sort. Ostensibly it has exactly the same legislative authority as the lower chamber but in actual practice its share in lawmaking is considerably less important.

2. The lower chamber, or National Council. The lower chamber, or National Council, is composed of about 200 members elected from the various cantons under a system of proportional representation.⁸ An election takes place every fourth year. Nominations are made by the various political parties, each of which presents a full or partial list of candidates in every canton. Or, as very often happens, a mixed (*panaché*) list is made up containing candidates from more than one party. Manhood suffrage is the rule. Every male Swiss citizen who has completed his twentieth year is entitled to vote, and any voter who is not a clergyman can be a candidate.⁹ Female suffrage has not been granted in Switzerland and has never been a national issue here.¹⁰

Its methods of work. The Swiss National Council holds two regular sessions a year and occasionally meets for a third time in special session. The sessions are short, rarely exceeding four weeks. The Council chooses its own presiding officer and he has the usual powers. Members may speak in German, French, or Italian—and they do. You will hear them all in a single debate. This gives rise to no serious practical difficulties because every educated Swiss knows at least two languages and often three or four.

⁸ There are a few cantons which have only one representative and in these, of course, there is no proportional representation.

⁹ A Protestant clergyman may become eligible, however, by resigning from the ministry.

¹⁰ Swiss women, nevertheless, suffer no other disability, socially or professionally.

Features in procedure: 1. The simultaneous introduction of bills in both chambers. The process of lawmaking in Switzerland deserves a word, for it presents some significant features. Every bill is introduced simultaneously in both chambers. This differs, of course, from the practice in other countries, but it has the merit of ensuring that a bill will have independent consideration by two groups of legislators. In the United States, if a bill originates in the House of Representatives and is killed in committee, it never gets before the Senate at all. Or, if introduced in the Senate and rejected there, it does not reach the House calendar. In Switzerland a bill may be under discussion in both chambers on the same day.

2. Dominating influence of the Federal Council. Any member of either Swiss chamber may introduce a bill, but most of the important measures are brought in by the ministry (Federal Council). They have been carefully framed before the opening of the session. Either chamber, moreover, may by resolution request the ministers to prepare a bill on any specified subject, and this is not infrequently done. Bills of the type known as private bills and private members' bills in England, or as local bills in the United States, are relatively few. This is largely because the Swiss have made ample provision for taking care of this ancillary legislation by means of executive decrees (*Verordnungen*).

3. Committee work. The two Swiss chambers do a good deal of their work through committees on each of which all the political parties are represented. All questions on the agenda are first referred to them. When a committee reaches a decision it appoints a reporter (as in France) to make the report. If the committee is badly split and a minority report seems to be in order, an additional reporter is named to present that side of the case. As a matter of fact, however, bills presented by the Federal Council are not often rejected or seriously modified by a legislative committee. The executive branch of the government in Switzerland guides the legislative branch as effectively as in Great Britain, perhaps even more so.

4. Legislative disagreements. If either of the legislative chambers rejects a measure, or passes it with amendments, a conference is held between representatives of the two bodies and an agreement is usually obtained in this way. Although the powers of the two houses are ostensibly equal, the upper chamber does not often stand out against the will of the lower house. At times the Council of States has insisted on defeating measures which the National Council has favored, but such action is becoming less common. The Swiss Council of States does not possess the power or prestige in lawmaking that the American Senate commands. On the other hand, it is more influential than the Council of the French Republic. Unlike most upper chambers, moreover, it has not acquired a reputation for being more conservative than the

other chamber. No one ever speaks of the Swiss Council of States as a citadel of reaction or a brake upon the wheels of progress.

The Swiss Executive

The Swiss collegial executive. The Swiss executive body is unique. Other countries have a single head—a king, president, or a prime minister chosen by the nominal chief executive as in England and France. Switzerland has a plural executive called the Federal Council which is not picked by a premier, but chosen in its entirety by two chambers of the legislature in joint session. The Federal Council is chosen after each general election and holds office for four years unless the lower chamber is dissolved and another election held in the meantime. Although this is not required by the constitution, the federal councillors are almost always chosen from among the elected legislators.¹¹ When so chosen, they resign their seats in the legislature and special elections are held to fill the vacancies. Re-elections to the Federal Council are common, and when a councillor is once elected he ordinarily remains in office as long as he desires.¹² This permanence of tenure alone would distinguish the Swiss Federal Council from all other European ministries. Although eminent party leaders are chosen to sit in the Federal Council there is no precise reflection of party strength. This is due, in part at least, to the fact that the Federal Council is elected by joint action of the two houses of the federal assembly. Because of the equal representation of small and large cantons in the Council of States, the actual popular strength of the parties is distorted.¹³

The President of the Confederation. Every year the two legislative chambers, in joint session, elect one member of the Federal Council to be chairman of that body with the title President of the Swiss Confederation. But apart from presiding at meetings of the Federal Council and giving the casting vote in case of a tie, he has no constitutional powers of any importance. He does not appoint officials, or veto bills, or carry on diplomatic negotiations. He is merely the titular head of the confederation and represents it on occasions of ceremony. But by custom he has become a sort of general overseer, responsible for inspecting the work of the various administrative departments, and the Federal Council may authorize him to act in its name. This is sometimes done in emergencies, but no act that the president performs in this

¹¹ No canton can be represented by more than one member and, by usage, three of the largest cantons, Bern, Zürich, and Vaud, are always represented.

¹² During the period 1848-1937 there were only fifty-six federal councillors.

¹³ In 1947 the Social Democrats with fifty-four members in the National Council had but one member in the Federal Council; the Radicals with forty-seven members had three national councillors; the Catholic Conservatives with forty-three had two; and the Farmers, Workers, and Middle Class party with only twenty-two representatives in the National Council had one federal councillor. The representation of the parties in the Council of States was as follows: Social Democrats, 6; Radicals, 11; Catholic Conservatives, 19; Farmers, etc., 4.

capacity is valid until approved by the Council. He is in no sense a prime minister; therefore, he does not select his colleagues, and has no authority over them. His legal powers are virtually the same as those of the other Councillors although he sits at the head of the table.

The vice president. The two chambers also elect one of the federal councillors to be vice president of the confederation. He presides when the president is absent and as a rule he is promoted to the presidency in the following year. The constitution does not permit a retiring president to succeed himself, or to be elected vice president; neither does it permit a vice president to be re-elected. Thus it virtually compels rotation. On the other hand, it does not preclude a second term if at least one year intervenes. Hence a minister who remains long enough as a member of the Federal Council is likely to have a second, or even a third, presidential term. It has been remarked that to have been President of Switzerland several times is evidence of longevity rather than popularity.

The Federal Council as a ministry; the Swiss theory of responsibility. What are the functions of the Federal Council as chief executive of the Swiss Republic? They are not wholly executive in their nature, but legislative and judicial as well. The Swiss government is not constructed, like the American, on the principle of separation of powers. The Federal Council is a ministry in that it serves as the executive committee of the Swiss parliament. It is controlled by the latter and must obey all resolutions passed by the two chambers. If the councillors find themselves outvoted on any matter they do not resign, as in France or England; they merely pocket their pride and obey the will of the legislative bodies with as good grace as they can muster. The Swiss see no reason why ministers, whose general work is satisfactory, should be turned out of office because they and the chambers are of a different opinion on some single proposition.

Functions of the Federal Council: 1: Executive. As the supreme executive authority of the confederation, the Swiss Federal Council conducts foreign affairs, promulgates the laws, controls the army, and appoints all federal officers other than those who are chosen by the two chambers in joint session. It prepares each year the federal budget of estimated receipts and proposed expenditures. This budget is then laid before the chambers by the federal councillor who is in charge of the department of finance. It is explained and defended on the floor by him. After the budget has been voted by the two chambers, the Federal Council assumes the duty of collecting the revenues and supervising the expenditures. The Council also presents an annual report giving an account of its work in both foreign and domestic affairs, and this report is carefully gone over by the legislative chambers.

2. Legislative. The members of the Federal Council also have important legislative functions. They prepare bills for consideration by the two chambers, sometimes in compliance with specific requests made by the latter. These requests are made by resolutions known as "postulates." All measures are prepared by experts in bill-drafting who are regularly employed for this purpose. On the other hand, when bills are introduced by private members of either chamber they are referred to the appropriate member of the Federal Council for his opinion before being acted upon. Thus no measure is ever enacted by the Swiss parliament without its being first considered by someone in the executive branch of the government.

This does not mean, of course, that the members of the Federal Council have a veto upon legislation. They sometimes present, at the request of the chambers, bills that do not meet their own approval, and bills of this type have occasionally been passed. The Federal Council or council of ministers, in a word, is expected to participate actively in the lawmaking process but not to feel hurt if its advice is disregarded. As someone has said, the Swiss federal councillor is like a lawyer or an architect in that his advice is sought and usually heeded; but he is not supposed to throw up his job when his employer insists on having something done differently. Although they cannot be members of either chamber, the federal councillors have a right to appear on the floor at any time and take part in the debate. They use this privilege freely and to good purpose.

3. Judicial. Finally, the Swiss Federal Council has some powers of a judicial nature. Originally it decided controversies on points of constitutional law and also served as the chief administrative court of the confederation, but many years ago the federal courts took over its jurisdiction in constitutional cases. It still retains some jurisdiction in cases arising under administrative law, although it has now surrendered most of this authority. A constitutional amendment in 1914 authorized the creation of a federal court of administrative justice. After a long delay, however, it was decided not to establish such a court but to give its proposed functions to the *Bundesgericht* or regular supreme court. The latter body, accordingly, now deals with complaints made by individuals against the actions of the public authorities.

The Council as a cabinet. Like the ministries of other countries, the Swiss Federal Council has both collective and individual functions. It holds regular meetings; its sessions are secret, and decisions are reached by majority vote.¹⁴ The president has a vote on all questions, and when the Council is deadlocked he has an additional vote. But the Swiss Federal Council is not really a cabinet

¹⁴ By a constitutional amendment (adopted in 1931) a chancery or secretariat was established to serve the Federal Council. It is headed by a chancellor who is chosen by the two legislative chambers in joint session. He functions also as head of the civil service.

in the common acceptance of the term. The term "cabinet" implies a degree of party solidarity which the Swiss body does not possess. Its members are never drawn from a single political party and are not necessarily united on any political program. They are not chosen to carry out party pledges or to serve the interest of a party, as is the case with members of the cabinet in Great Britain and in the United States. In fact it is quite usual for the Council to give its unanimous approval to measures it presents to the legislature, even though its members are leaders of various parties. Swiss party feeling seems to generate lower temperatures than is the case elsewhere. Of course, this nonpartisan unity is not always operative. Sometimes one or several members of the Federal Council may oppose bills favored by the majority and speak against them in the legislature. The Federal Council is by no means a coalition government in the ordinary sense of the phrase, and a member who disagrees with a Council decision would rarely consider resigning.

Individual work of the councillors. In addition to its collective functions the Federal Council has work which its members perform individually. Each of the seven councillors, including the president and the vice president, is the head of an administrative department. These seven departments represent the usual division of administrative work as one would expect to find it in a small country. Their designations are: (1) political (including foreign affairs), (2) finance and customs, (3) justice and police, (4) interior, (5) military affairs, (6) posts and railways, and (7) public economy (that is, agriculture, industry, commerce, and labor). The "political" department includes not only foreign affairs but naturalization, federal election laws, emigration, and some other matters. Each department is divided into bureaus or services. In these the work is done by members of the Swiss civil service which is now organized under a general law defining its status and privileges.¹⁵

Is the collegial executive a success? One is inclined to wonder at the peculiar Swiss executive. Why was it constructed in this form? And how does it manage to work so well? As to the first question, it may be said to represent a federal compromise. No canton was willing to permit the executive power to reside exclusively, even if temporarily, in the hands of a single representative from another canton. Hence the provision that no two federal councillors may come from the same canton. Furthermore, the Swiss tradition, forged in the long struggle with the Habsburgs, was strongly antimonarchical.

The second question is more difficult to answer. The French had tried a plural executive, the Directory, which lasted but four years and was regarded

¹⁵ A copy of this law (June 20, 1927) may be found in Leonard D. White, ed., *Civil Service in the Modern State* (Chicago, 1930), pp. 363-382.

by all as a dismal failure. As Jefferson wrote: "The experiment in France failed after a short course, not from any circumstances peculiar to the time or nation, but from those internal jealousies and dissensions in the Directory, which will ever rise among men equal in power, without a principal to decide and control their differences." Jefferson's analysis seems plausible, even though he dismissed too casually the difficulties that beset the Directory. We have seen also the executive of the Soviet Union, which began as an oligarchy, quickly developed, or degenerated, into a dictatorship. Why, then, has the Swiss plural executive succeeded, as it has in the opinion of most observers? We may note that plural executives were no novelty in some of the cantons and had worked well enough, although this local government precedent was no guarantee of satisfaction at the national level. What happened was this: the Federal Council was content to remain the guide and servant rather than the master of the legislature. Too diverse in party allegiance to present a united front to the legislature on controversial policies, unwilling to precipitate crises by resignations which, in any case, would not bring about new elections, the Federal Council developed into something like a body of super civil servants. As professional career executives, their collective experience and consequent prestige is great. Successful councillors are not infrequently re-elected despite a diminution in the party strength that originally entitled them to office. The Council's relation to the legislature is very much like that of a city manager vis-à-vis his municipal council. Leadership is offered and professional competence ensures its usual acceptance, but if the advice is rejected, the rejection is not considered a reason for the executive's resignation.¹⁶ Only in a country of political moderation and with no deep or serious ideological differences would this be possible. The danger inherent in the system is that the executive may tend to become bureaucratic and stodgy.

The Judicial System

The Swiss judiciary; declaring laws unconstitutional. Turning to the judicial system of Switzerland, not much need be said. There is only one federal court—the *Bundesgericht*, it is called. It consists of from twenty-six to twenty-eight judges (and nine substitute judges) elected for a six-year term by the two legislative chambers in joint session. But the practice is to re-elect these judges on the expiry of their terms so that they virtually hold office as long as they desire it. The court sits in three sections. It has original jurisdiction in

¹⁶ Another reason for the success of the Federal Council in directing legislative action lies in the fact that the councillors enjoy wide powers of appointment as well as influence over public works projects. As the French would say, they hand out the *pots de vin*.

controversies arising between the confederation and the cantons, and in some other cases. It has appellate jurisdiction in cases which come up from the cantonal courts. And, as has been said, it now functions as an administrative court. But in the matter of ultimate judicial supremacy the Swiss federal tribunal or supreme court differs from the American. It may nullify a cantonal law if it finds the same to be in conflict with the federal constitution or with federal laws, but it has no authority to declare a federal law unconstitutional. On the contrary, the Swiss constitution expressly declares that "the court shall apply laws voted by the federal assembly."¹⁷ This fact is of some significance because it is often contended by American lawyers that no federal constitution, with a division of powers, can ever prove workable unless some supreme tribunal is given power to keep both the states and the federal government within their own bounds. Swiss experience does not show this contention to be valid under all circumstances.

Direct Legislation

The initiative and referendum. Switzerland is the ancestral home of the initiative and referendum. In one form or another these institutions of democracy have been used by the Swiss cantons for a very long time, and it is from Switzerland that they have spread, along the major routes of democratic infection, to various other countries including the United States. They are perhaps the most remarkable among all the institutions that democracy has produced, for they afford a means of lawmaking without the intervention of a legislative body, in other words, a channel of direct action by the people. Nothing in the Swiss political system is more instructive to the student of modern democracy.

A definition of the terms. The initiative is an arrangement whereby a specified number of voters may prepare the draft of a law and may then demand that it either be adopted by the legislature or referred to the people for acceptance at a general or special election. If approved by the required majority it then becomes a law. The referendum is a device whereby any law which has been enacted by the legislature may be withheld from going into force until it has been submitted to the people and has been accepted by them at the polls. Thus the two agencies supplement each other; the intent of the one is positive—to secure the enactment of some measure which the legislative body has ignored or declined to pass; the intent of the other is negative—to provide a popular veto upon something which the legislature wants but which the people do not. As a rule the initiative and referendum go together, but

¹⁷ Art 113

they need not be conjoined, for either can exist alone.¹⁸

The varied lessons of Swiss experience. All the stock objections to the initiative and referendum have been in part verified, and in part disproved, by Swiss experience. People vote on questions which they do not understand. The peasant often goes to the polls and marks his ballot on some complicated question without any comprehension of what it is all about.¹⁹ Regional prejudice and partisan bias decide the issues in some cases. The system involves expense and puts the people to inconvenience. On the other hand, it has been a useful instrument of public education, and has developed among the people a lively interest in political affairs. Swiss patriotism has been stimulated by a sense of popular responsibility. Direct legislation, moreover, has provided the Swiss people with a check upon legislative ineptitude which otherwise would be lacking, for there is no executive veto in Switzerland as in America. In any event, the great majority of the Swiss people appear to be satisfied with their system of direct legislation and there is no likelihood that they will abandon it. A careful American student of the matter has given his opinion that the advantages in Switzerland far outweigh the defects.²⁰ Altogether the Swiss electorate has been slow to accept initiative proposals. In the period 1874 to 1938 there were thirty-eight constitutional amendments accepted by referendum. Only six these had their origin in the popular initiative, and of these only two were of great importance. One, adopted in 1918, required the election of the National Council by proportional representation; the other, adopted in 1921, required the approval by referendum of all treaties having a duration of more than fifteen years.

Local government. As for local government, each canton has its own constitution limited only by the requirement of the federal constitution that

¹⁸ The present status of the initiative and referendum in Switzerland may be summarized as follows: The *initiative* is used (1) in all the cantons except Geneva for the revision or amendment of the cantonal constitution; (2) in all the cantons except Lucerne, Valais, and Fribourg for the proposing of new laws; (3) in the confederation for proposing constitutional amendments (but not for proposing laws). The *referendum* is used (1) in all cantons except Fribourg for the adoption of ordinary laws; (2) in the confederation for the adoption of constitutional amendments proposed by the federal legislature, and (3) in the confederation for ordinary laws where duly invoked by petition. But some of the cantons have the *obligatory* referendum, that is, all laws passed by the council must be submitted to the people, while others have the *optional* referendum, in other words a measure is not submitted unless a prescribed number of voters petition for such action.

¹⁹ In Bern and Aargau the budget was formerly subject to compulsory referendum and was regularly rejected by the electorate, which could not bring itself to approve the spending of such sums of money. The cantonal governments finally were able to get their constitutions amended to leave budget approval to the legislatures.

²⁰ R. C. Brooks, *Civic Training in Switzerland: A Study of Democratic Life* (Chicago, 1930). A recent referendum was one held in April, 1951, on two proposed amendments to the federal constitution. One would have had Switzerland abandon the gold standard and issue paper currency which would depreciate in value each month and thus compel spending. This radical monetary "reform" was attacked vigorously by parliament, the banks, and the newspapers. The educational campaign succeeded and fewer than 40,000 votes were cast for the amendment which had required 90,000 petitioners to receive consideration at the polls.

it be republican in form.²¹ A few of the smaller, rural cantons have retained the *Landsgemeinde*, a legislature consisting of all male citizens, much like a New England town meeting. This is direct democracy à la Rousseau and can trace its origins beyond recorded history, probably to the old Teutonic *Folkmoet*. This meeting is held annually. The citizens assemble, wearing swords, in the chief town or village of the canton. They meet in the market place or square and surround a dais in the center, occupied by the cantonal executives, distinguished by being attired in top hats. The executive, usually consisting of some five members, renders account of its stewardship to the assembly and is (usually) re-elected. Large issues are put to the vote which is done by show of hands. There is variation among the cantons as to the amount of free speech permitted the assembled citizens in the *Landsgemeinden*. The tendency, with the increasing size of these meetings, has been to restrict or abolish the right to "speak from the floor." The executive is the actual governing body and remains to perform daily administrative tasks until the next annual meeting. Altogether, this relic of ancient folk democracy has remained a picturesque survival and a kind of patriotic festival rather than a working scheme of government. The Swiss railways operate excursion trains to the *Landsgemeinden* for the benefit of tourists.

But most of the cantons are not, and never were, of this type. They have no general assembly of the citizens. Instead, the voters elect a great council, as it is called. This council meets frequently and serves as the cantonal legislature—subject, of course, to the initiative and referendum. The people of these cantons also elect an administrative council, usually of five or seven members, and this body serves as the local executive.

The communes. Within the cantons are the cities, towns, and villages which are known as communes no matter what their size. In the smaller communes, the town meeting type of local government prevails; but in the larger ones the people elect municipal councils.

Parties in Switzerland

Political parties. There are several political parties in Switzerland, of which the most important are the Social Democratic, Radical Democratic, Catholic Conservative, and a Farmers', Workers', and Middle Class party. The Social Democrats profess a Marxist philosophy, although, like similar parties in Scandinavia and elsewhere, they are not affiliated with the Third International. The Radical Democratic party, deriving its support from the middle classes and with more than a century of well-established tradition behind it, is not so

²¹ One canton, Neuchâtêl, was a principality until 1848 when the prince's representative and governor was expelled by popular action. The Prince of Neuchâtêl was the King of Prussia who did not renounce his claims formally until 1857.

radical as its name would imply, and in many ways resembles the French Radical Socialist party. The Catholic Conservatives comprise two groups, one inclining to conservatism and the other to Christian Socialist principles. The party group which represents the farmers and workers is an offshoot from the Radical Democratic party, but more conservative and especially interested in tariff protection for industry and agriculture and in national defense. No single group possesses a majority in the Swiss parliament.

Swiss party trends. There was a tiny Swiss Nazi party, suppressed when war broke out, and there were also a few Communists. The Communist party, too, was outlawed in November, 1940, but its former members combined with a small left-wing group of Socialists to form a new party led by Léon Nicole of Geneva. This party is destined to remain small and unimportant unless it has a chance to make capital of an economic depression. The rest of the parties are all moderate to conservative in their philosophies. The Social Democrats are far from doctrinaire Marxists and are really a reformist labor party. As they represent the farthest left of any effective political force, it can be seen that the center of Swiss political gravity must remain slightly to the right of center. The political extremes have held little attraction for the Swiss voter.

Party allegiance. The remark made earlier about low political temperatures should not lead to the assumption that the Swiss do not take their politics seriously. On the contrary, the Swiss voter usually makes a firm choice early in his political life and remains permanently faithful to his chosen party. He takes a very practical and down-to-earth attitude about political questions. To him they are not, as so often in France, broad philosophical problems, but a matter of economic advantage or otherwise. Very few Swiss remain independent in politics, so election upsets do not happen as they can with the two-party system combined with a large floating vote. Swiss parties gain and lose in strength, of course, but gradually, and the center of gravity is little affected by most of the changes. It should also be noted that the Swiss voter is never a machine voter. Swiss parties have no patronage to speak of and so the parties remain relatively "pure" and free of machine politics.

Nominations. Nominations to the National Council are made by party conventions in each electoral district. The chief parties sometimes come to an informal agreement as to the number of seats each is entitled to on the basis of known party strength and agree to nominate only the same number of candidates. When this is done the election is simply a formal ratification of the nominations. Naturally, such agreements are not always possible and when they are not made the election contests are real enough.

The fundamentals of Swiss politics. All parties but those of the extremes

agree on three fundamentals: Swiss independence, Swiss neutrality, and Swiss trade. They may disagree on details and on the best method, say, of increasing the export of watches. But on the importance of the three goals there can be no difference of opinion. Their achievement requires the constant watchfulness and enterprise of the whole Swiss people and their government. They cannot afford whimsy or extravagance in politics or business. Under these circumstances it is not altogether astonishing that their federal government and their federal politics are serious, dull, business-like, and highly successful in achieving the three great goals.

2. THE SCANDANAVIAN KINGDOMS

The ministerial system. Next to Switzerland, in point of interest for the student of democracy, come the three Scandinavian kingdoms—Sweden, Norway, and Denmark. Until 1905 the first two were united, but in that year the union was dissolved by mutual consent. All three arrived at democratic maturity by a series of measures which gradually limited the power of the monarch, made the composition of the cabinet conform to the majority of the legislature, and extended the franchise. In each of the three countries the king is the executive head of the government, but all official actions of the crown are taken on the advice of a cabinet, headed by a prime minister. This cabinet is in each case responsible to the national parliament. The executive branch of the government in all three Scandinavian countries is roughly modeled upon that of Great Britain.

Sweden

Historical background. Sweden, the largest and most populous of the Scandinavian realms, has had a long and interesting political history. Students of European history will recall the important rôle which Sweden played in the stirring drama of European politics during the reign of Gustavus Adolphus in the seventeenth century. The present royal family descends from Bernadotte, one of Napoleon's marshals who was chosen to the throne as Charles XIV in 1818. There is a formal constitution, dating from a few years earlier, but it has been greatly supplemented by law and custom during the past century or more. For her parliament Sweden originally had a body of four "estates" or four chambers representing the clergy, the nobility, the townsmen, and the free peasantry. Each sat separately and taxes could not be voted unless all four of them concurred. This was too cumbrous an arrangement for modern legislative needs, so in 1866 the four estates were reduced to two.

The parliament. The Swedish parliament or Riksdag now consists of two chambers, both elected—one indirectly and the other directly—by the peo-

ple. The "first" chamber or upper house²² is composed of about 150 members who are chosen for eight-year terms by the provincial assemblies or *Landstings*. The latter are made up of assemblymen elected by voters who are at least twenty-seven years of age and meet a modest property qualification, in accordance with a list system of proportional representation. One-eighth of the members of the Swedish upper house finish their terms each year. The "second" chamber or lower house is a larger body. It has about 230 members all of whom are directly elected by an electorate of men and women aged twenty-three and more. The country is divided into twenty-eight constituencies, mostly counties, each of which elects several members of the lower house by proportional representation. The plan used is the one known as the d'Hondt system, which is too complicated for explanation here.²³ The result in Sweden, as elsewhere, has been to encourage the persistence of minor parties, and in the present Riksdag there are six or seven parties ranging all the way from Conservatives to Communists. However, the Swedes are a homogeneous people, enjoying a fairly high degree of general prosperity and with no substantial element among them smarting under a feeling of social injustice. Accordingly, the use of proportional representation has not produced the multiplicity of extremist splinter parties observable in some countries, nor has it resulted in a series of unstable cabinets. There is no such continual in-an-out procession of cabinets as in France.

Powers of the two chambers. The two chambers have substantially the same constitutional powers and the ministry is equally responsible to both. This arrangement might seem to be unworkable, but it has not proven so in Sweden because the same coalition of party groups is usually able to command a majority in both chambers. Moreover, if the two houses fail to agree on any important measure the ministry can have them called into a joint session where a majority decides the issue, an unusual and simple device for breaking a deadlock.

The committee system. An interesting feature of Swedish parliamentary procedure is that all committees are joint committees, each chamber being represented by a definite quota of members. This arrangement strengthens the influence of the committees both in parliament and with the ministers, and seems to work well. A curious feature is that the committee system is detailed in the constitution and so can be altered only by a constitutional amendment,

²² The Swedes reverse the usual political nomenclature and call their second chamber the "first."

²³ For an explanation of the different schemes of proportional representation used in European elections (Hare system, D'Hondt plan, Hagenbach-Bischoff formula, and so on) see A. J. Zürcher, *The Experiment with Democracy in Central Europe* (New York, 1933), chap. v, or, for a more extended discussion, C. G. Hoag and G. H. Hallett, *Proportional Representation* (New York, 1926).

requiring a law passed by two successive Riksdags with an intervening election.

The introduction and passage of bills. As in most parliamentary systems, the ministry has a near-monopoly of legislation and an effective control over bills that originate with private members. All bills go to the appropriate standing joint committee and are considered simultaneously in both houses.

Royal assent. All except tax bills require the royal assent, but this has become a mere formality as it is exercised invariably on ministerial advice.

The ministry. The ministry consists of several ministers with departmental responsibilities plus others without portfolio. They are not necessarily Riksdag members, and whether they are or not, may attend sessions and speak in both chambers. Although the ministry has the legal power to dissolve the Riksdag, this power is never used. It has become a custom of the constitution, however, for a ministry to resign when it is clear that it has lost the confidence of parliament. Ineeded, no other course would seem possible, as it could no longer control the legislative program.

Administrative independence. A remarkable feature of Swedish administration is the considerable number of boards and commissions which, while within the ministries, are not legally answerable to the minister. This independence could distort administrative policy and weaken the government were it not for the fact that there is usually a reasonable amount of co-operation with the minister.

Policies and parties. Sweden is noted for its consumers' coöperatives and for its government-supported program of welfare activities. These have been expanded gradually over a long period of years by the Social Democrats, often called the Labor party. In this they have been supported much of the time by the Agrarians, who have been interested chiefly in those aspects of the welfare program affecting the farm population and in maintaining farm prices. Between them, these two parties have enjoyed a clear majority in the Riksdag for a number of years and have been able to monopolize cabinet posts and outvote the parties of the Right, Centre, and extreme Left. In fact, the Social Democrats have had a controlling influence in government most of the time since about 1914 .

Norway

Norway is in many ways like its sister kingdom, Sweden. Both are constitutional monarchies and both enjoy similar democratic parliamentary government. Norway, however, has a parliament that is unique in one respect. It is designed to provide the advantage of a bicameral system—a review of all legislation before enactment, “sober second thought,” without its usual

disadvantage, an overrepresentation of part of the population such as an aristocracy, the wealthy, the older citizens, or the rural inhabitants.

The Storthing. All citizens of both sexes, aged twenty-three and more, elect 150 members to the parliament, called the Storthing. This is done in multi-member districts by a system of proportional representation with a ballot on which the voter lists his choices in order of preference. When elected, the Storthing divides itself into two chambers: the Lagthing, containing one-fourth of the membership (38) and the Odelsting containing the rest (112). The division is so arranged as to retain proportionately about the same party strength in each chamber. All legislation, whether ministerial or private member, must originate in the larger body, the Odelsting. If passed, bills then go to the Lagthing which may also pass them or reject them and return them to the other chamber with a statement of the reason for rejection. If the Odelsting decides to press for passage and the measure is again rejected by the Lagthing, a joint session is held of the whole Storthing and a two-thirds vote is required to pass the bill.

Denmark

Denmark also is governed by a parliamentary system essentially similar to that of its sister kingdoms. Like them it has a rather high voting age: twenty-five and over for the lower house and thirty-five and over for the upper chamber. Proportional representation is used. The most unusual feature is in connection with the upper chamber. At the close of their term, the outgoing members select one-fourth of the new house while the remainder are chosen by electoral colleges which are elected by the older voters.

3. THE IBERIAN DICTATORSHIPS

The Iberian peninsula, separated from the rest of Western Europe by the lofty Pyrenees, is the home of two related peoples, the Spanish and the Portuguese. Both achieved national independence and unity in the Middle Ages and both produced bold explorers and seafarers who figured largely in the early days of European imperial expansion. So rich were the prizes of empire won by these small countries that, for a time, they became almost parasitic in their reliance upon the wealth of the Indies, East and West. Their peasants became soldiers and sailors, their nobility, military commanders and wealthy governors of vast provinces. The humdrum business of developing a viable home economy was left to less romantic people like the British and French. But their empires were too vast and their policies based too largely upon simple exploitation. In time the bulk of the colonies began to fall one by one to the newer and stronger colonial powers or to wrest their independ-

ence from the mother country or to remain as backward, undeveloped areas. It is not too fanciful to say that many of the later ills of Spain and Portugal were the result of their indigestible empires.

In both countries, after the imperial dream had faded, there remained a small, arrogant, and wealthy aristocracy owning great estates tilled by impoverished peasants. In both, the Roman Catholic Church kept rich endowments of land and money and remained highly intolerant of other religions long after the idea of religious toleration had been accepted elsewhere in Europe. In both, the disruptive ideas of the French Revolution produced belated effects but without destroying the strength of religious and traditional ideas and ideals. The resulting conflicts between the old and the new, the traditional authoritarian and the modern libertarian and socialist, have resulted in both countries in the establishment, for the time being at least, of dictatorial régimes based upon the traditional values.

Spain

The land and people. Spain is agriculturally a poor country, but 75 per cent of its people are directly or indirectly dependent upon agriculture for a living. Further, the land is not completely used. Large sections of the great estates in the south and west remain unused, while in other sections the average farm is too small to support the peasant and his family. The small, prosperous, freeholding farmer is a rarity among the mass of landless laborers, share-croppers, and renters. In some provinces only 15 per cent of the population is literate, and the lack of transportation and other facilities results in a social and cultural stagnation. Under these circumstances the landlords, lay and ecclesiastical, have long exercised a predominant influence over the government and the administration.

Recent history. The Spanish people, ill-fitted by education and history for self-government, were far from happy under their successive despotisms. Although Spain remained neutral during the First World War, it failed to profit or prosper. The Spanish government was faced with an insurrection in its Moroccan colony following the war and the subsequent campaign was so ineptly managed by the Spanish commanders that it resulted in military disasters and the slaughter of thousands of Spanish troops. Not only the army command but the king lost prestige, and the monarchy may have been saved at this point only by the coup d'état of 1923 which made Primo de Rivera dictator. The dictator was relatively successful at first in improving economic conditions, and gained some popularity but felt compelled, as time went on, to step up the repressive measures designed to stifle all opposition. Ill health and increasing difficulties led to his resignation in 1930. His successor as

dictator, General Dámaso Berenguer, proved to be extremely unpopular with everyone except the king, and his rule led shortly to a situation of such revolutionary temper that King Alfonso fled the country in April, 1931, leaving a provisional republican government to occupy the seat of power.

The Republic and its constitution. The Second Spanish Republic²⁴ began with high hopes. The municipal elections of April had resulted in the victory of republican parties in almost all the cities and towns of Spain.²⁵ The first duty of the provisional government was to reform the electoral law to permit a truly democratic national election to the Cortes (parliament). The Republican-Socialist coalition won an overwhelming victory at these elections, held in June, and at once embarked upon a series of reforms calculated to turn Spain into a modern liberal state. The Cortes drew up a constitution providing for a parliamentary republic. The government, premier and cabinet, appointed by an elected president, should be responsible to a single-chamber parliament elected by all citizens, male and female, aged twenty-three and over. The Cortes should sit for four years and the president for six. The constitution also provided for a drastic change in the position of the church, and this led to the first serious discord within the governmental coalition. The Socialists were all for a rapid destruction of church privileges, and even though the constitution did not go so far, some of the moderate non-Socialist republicans resigned from the government. Shortly a number of measures were passed secularizing education and marriage, permitting divorce, and so forth. In January, 1932, the Jesuit order was dissolved and its property forfeited to the state. Subsequently the other religious orders had their property confiscated. All this, and other measures as well, led to increasingly serious opposition throughout Spain. Many landlords refused to cultivate their fields and the wealthy transferred their assets to other countries. At the same time Spanish exports were declining in price, for this was the period of the world-wide business depression. Even on the extreme Left there was opposition led by the Anarcho-Syndicalists.

As the conservative forces recovered from the disasters of 1931 they began to organize against the republican government. They included a curious mixture of business men, landlords, church dignitaries, royalists, pious Catholics, Carlists, and the new *Falange*.²⁶

The Franco Government: the elections of November, 1933, and the civil war. The first general election held under the new constitution, in Novem-

²⁴ The First Republic was an abortive attempt that lasted less than a year and was overthrown by a military coup in 1874.

²⁵ It was this which had led to the king's flight.

²⁶ The Carlists were legitimist royalists whose ideas would have seemed old-fashioned 200 years ago in any European land but Spain. The *Falange* represented the Spanish version of fascism, authoritarian, nationalist, and with an anti-clerical left wing.

ber, 1933, led to the victory of the Right and Center parties over the republican and socialist Left. Some of the latter began to talk of revolution and the extreme Right to threaten a dictatorship. Neither extreme was really strong enough to rule successfully by parliamentary means and both were determined to rule at any cost. The moderate liberals of the Center were between two fires. Clearly such a political situation in a country with no tradition of self-government or of compromise can lead only to civil war. The inevitable took place and in 1936 Spain became a battleground. The situation was further complicated by the intervention of Fascist Italy and Nazi Germany on the side of the rebel leader Franco and the receipt of limited assistance from the Soviet Union by the government, while France and England stood for "non-intervention" in an attempt to localize the conflict. Franco's final victory in March, 1936, ended the republic, encouraged the fascist leaders in other countries and concluded the curtain-raiser for the Second World War.

The Franco dictatorship. Although the Falange remains the only tolerated political party in Spain it is by no means the sole repository of political power. Franco assumed the title of *Caudillo*²⁷ and began to manipulate his supporters, the Falange, the church, business interests, and others, so as to prevent any one of them from securing a position of unquestioned dominance. His enemies of the civil war period were cruelly destroyed and all overt opposition severely crushed.²⁸ At the same time he had to temporize with the royalists and even give vague assurances of an eventual restoration of the monarchy. The republican reforms were abolished, the church restored to its former position, and the army and police relied upon as the chief support of the dictatorship.²⁹ The Cortes was revived but as a "corporative" body, representative in theory of the various aspects of Spanish society rather than a directly elected parliament. Its membership of about 400 has only some 140 elected members, and these are chosen by "syndicates" which resemble Mussolini's "corporations." The remainder are members by virtue of other offices. They include the national council of the *Falange*, mayors of principal towns and cities, university presidents, heads of various institutes, and other persons of importance.

This Cortes has no power to change the government, and exercises legislative functions only in "coöperation" with the *Caudillo*. In conformity with the techniques of Hitler and Mussolini, Franco held a plebiscite in July, 1947,

²⁷ Translated as "chief" or "leader."

²⁸ The number of political prisoners is not known precisely. The Franco government admits to about 18,500 as of 1951, but neutral estimates put the figures nearer 40,000. In addition, many thousands enjoy "watched liberty," which means that they are under constant police surveillance, may not hold government jobs, and are discriminated against in private employment. These figures do not include the thousands who died in prison or were executed at the end of the war.

²⁹ The army is larger than any purely military necessity would dictate. The armed forces account for more than half of all government expenditures.

which gave him ostensibly overwhelming popular support. There is evidence that the dictatorship probably represents a minority of the Spanish people, but it seems highly unlikely that any truly representative and democratic government could rule Spain in an orderly fashion under present circumstances. The differences between Right and Left are unbridgeable; extreme views are held by such a considerable number of Spaniards that compromise is impossible and parliamentary give-and-take out of the question.

Local government. As one would expect in a dictatorship, real local self-government is not permitted. The original freedoms of the Spanish cities had deteriorated, in fact, long ago under the mediaeval kings, and succeeding central governments still further reduced them.

Spain is divided into fifty provinces, each under a centrally appointed governor somewhat resembling the French prefect in functions and powers. He works with a provincial council (*Diputación*) elected by the municipal councils within the province. The powers of this council include the setting of local tax rates and voting appropriations for roads, benevolent institutions, public health, and the like.

The basic units, the municipalities, are likewise not entrusted with the choice of their executive officer. The mayor-chairman, who presides over the *Ayuntamiento* (municipal council) is appointed directly by Madrid in the case of provincial capitals and by the provincial governor in other cases. The council is made up as follows: one-third of its members are elected by the vote of the heads of households, by secret ballot; one-third are elected by the syndicates; the remaining third are coöpted by the first two groups from leading citizens of the community. All are amateurs, serve without pay, and may not refuse the honor if chosen. It will be observed that the direct participation of the Spanish electorate in this entire process is slight and remote. In any case, although the council adopts the municipal budget, it has no genuine power, which remains in the hands of the mayor-chairman and the permanent administrative officials.

The supports of the dictatorship. In summary it may be said that the Franco dictatorship relies upon both negative and positive support. Negatively, the potential opposition is cowed by the use of force and fear, as well as by a vivid memory of the horrors of civil war. So long as the dictator commands the loyalty of police and army he need fear no armed insurrection and he is able to destroy all overt expressions of opposition. Positively he relies upon the same forces that brought him to power: the army, the propertied class, the *Falange*, the church. The latter two forces have been brought closer together. The Bishop of Madrid sits on the political council of the *Falange*.³⁰ The

³⁰ The anticlerical tendencies of *Falange* "Old Shirts" were suppressed and indications of piety stressed since 1943 when fascism had lost the war in Italy and become internationally unpopular.

church as a political force is now probably stronger than the *Falange* in Franco's inner councils. Nevertheless the 700,000 *falangistas* provide the personnel to operate the social organizations including labor and assist the police in discovering subversive persons or activities and reporting them. Because of what Franco owes to these forces, he is not free to introduce reforms that would operate against their interests. In view of this fact and of the terrible destruction of the civil war and the general poverty and economic distress of the mass of the people, Franco is compelled to look to foreign aid or risk the gradual deterioration of the dictatorship.

Portugal

History. The *Estado Novo* established in Portugal by the constitution of 1933 is one of the most interesting as it is the mildest of the modern dictatorships. It was the result of a long and turbulent history of struggles between the Portuguse liberals and freemasons on the one hand and the conservatives and clericals on the other. Like Spain, Portugal entered the nineteenth century with a mediaeval governmental system and a people consisting in the majority of pious, illiterate fishermen and farmers. The impact of modern liberalism was hardly felt except in the towns and cities. In Lisbon particularly it led to the formation of revolutionary parties and societies. Portugal, like Spain, had suffered from the after-effects of an easy influx of colonial wealth.³¹ The mass of the people remained poor and backward. They were not prepared to operate smoothly a democratic governmental system, foreign to their experience and based upon a philosophy alien to their own society and beliefs. Nevertheless the liberals were able to lead a successful revolt in 1820 and set up a constitution which suppressed the Inquisition and established a highly democratic and egalitarian system.

This was finally accepted by the king, John IV. In 1826, however, a less radical charter replaced the constitution of 1820, and for many years Portuguese politics represented the attempts of the absolutists to destroy the charter and the liberals to make it work. From 1881 there was a strong Republican party, but the Progressives and Regenerators, in the older liberal tradition, were able to control the government down into the twentieth century. These parties had developed into a virtual oligarchy, maintaining power by fraud and corruption and an electoral system which enabled the government of the moment to ensure its own return to power.³² As a result the Cortes failed to reflect public sentiment and, in particular, the growing strength of the

³¹ Not that the empire was all lost. Even today Portuguese overseas possessions amount in area to twenty-five times that of Portugal itself and the Portuguese Empire remains the world's third largest. Principal colonies are in Africa.

³² The reader will remember that somewhat similar conditions existed in pre-Mussolini Italy.

Republicans. The latter party received a boost when the king became implicated in financial scandals. Even the energetic dictatorship of João Franco (1906-1908) was unable to save the monarchy. The last monarch, Don Manuel, was expelled by a revolution in 1910 and a republican régime established.

The new republic, however, was not destined to have a peaceful existence. Portugal was far from united behind it. During the next sixteen years there were a number of violent outbursts and some forty changes of government. The final outcome was a military dictatorship under General Oscar Carmona.³³ In April, 1928, the general asked a professor of economics, Antonio de Oliveira Salazar, to accept a ministerial post and reorganize the national finances. He did so, and with remarkable success. Before long Salazar was recognized as the strong man of the régime and General Carmona as little more than a figurehead. In 1932 Salazar became prime minister as well as minister of finance.

The new state. Salazar's dictatorship was given constitutional status in a new constitution setting up what he calls the *Estado Novo*. This constitution was approved by an overwhelming vote at a plebiscite held on March 19, 1933.

Its organic principle. Its principles require, according to Salazar, the establishment of a government representing the Portuguese people, not as individual citizens but as members of "organic" groups. The government so established should be strong, stable, and not subject to overthrow at the whim of an irresponsible popular assembly. In order to achieve this result, no political parties of any sort are permitted.³⁴

To be sure, in 1930 Salazar founded the National Union, an organization of all who support him and his principles, but not, one is told, to be considered a party but rather a national and patriotic "movement." The state made up of this government and people is a social and corporative state in harmony with the "natural structure of society."³⁵

The governmental system intended to embody these principles is as follows:

The chief of state. The chief of state is the President of the Republic, elected by direct suffrage for a seven-year term and indefinitely re-eligible. He nominates the prime minister and other ministers who are responsible to him only. He may, at will, dissolve the National Assembly. Except for the appointment and dismissal of a ministry and for his own resignation, the official acts

³³ General Carmona and two other generals led a military march on Lisbon. As the army was behind them and the government had few friends, they were able to establish the dictatorship almost without opposition.

³⁴ Salazar himself had been a member of the Catholic Center party but had not been active politically until he accepted a ministerial post.

³⁵ This concept of the state derives from the "organic" ideas of the political pluralists and most directly from the 1931 Papal encyclical, *Quadragesimo Anno*.

of the president all require a ministerial countersignature. Evidently the president is potentially a dictator because of his power to dismiss and appoint ministers without being answerable to any public body except the electorate at the close of his long term of office.

The executive. The government (executive) consists of the prime minister, who may hold one or several ministries himself, and other ministers. The government is responsible to the president only and in no way to the National Assembly. It may legislate by decree-laws (Article 109) when the National Assembly is not in session.

The National Assembly. The successor of the old Cortes is the National Assembly. Its members may introduce bills, except money bills, but it is little more than a nominal legislature. It sits for three months only and its chief duty is to ratify the decree-laws issued by the government during the preceding nine months and to pass additional government bills. According to the constitution it can repass bills over the president's (really the prime minister's) veto by an absolute two-thirds majority. It may also refuse to ratify previous decree-laws and so, in effect, repeal them.

Elections to the National Assembly. The National Assembly has ninety members who are elected for a four-year term. At least two hundred electors may sign a petition nominating an entire slate of ninety members. The voter is then confronted with several of these lists. He selects one and crosses off any names he wishes not to vote for. No names may be added. The successful candidates are those who have been voted for (not stricken out) on the largest number of ballots. No Assembly opposed to the government can be elected because no name may appear on any list without government approval, and no candidate is eligible unless he declares himself a loyal supporter of Salazar's government.

The suffrage. Suffrage is not universal. In general, only "heads of families" have a vote. This is in line with Salazar's idea of the representation of natural associations rather than individuals.

The corporative chamber. In addition to the Assembly there is a consultative body called the corporative chamber. This is not an upper house and is not listed in the constitution as an "organ of sovereignty."³⁶ It contains representatives of local government, the universities and academies, the economic corporations, the Catholic Church, and other social groups and interests. Its chief duty is the discussion by its various committees or "sections" of laws proposed in the National Assembly and of proposed decree-laws of the government when the Assembly is not in session. Its work receives no publicity so

³⁶ Art. 71 declares these organs to include the chief of state, the National Assembly, the government and the courts of justice.

no one knows whether or not its advice is ever effective in persuading the government to alter a proposed law. Most observers agree that it is not important and is little more than "window-dressing" for the autocracy.

Local government. Local government is in the hands of a hierarchy of councils, only the lowest of which is directly elected by the voters. Heads of families vote for the parish council. All the parish councils in a municipality elect the municipal council, and the several municipal councils in a province elect the provincial council. Each rural parish has a subsidized *Casa do Povo* (house of the people) or if it is a maritime parish, a *Casa dos Pescadores* (fishermen's house). These serve as a combination social, educational, and recreational center for the parish. These *Casas* are represented in the corporative chamber by delegates selected by the corporation council.

Labor laws. The Statute of National Labor (1933) is an inclusive law outlining the respective rights and duties of capital and labor. The statute declares itself for privately owned capital, repudiates the Marxist class struggle, prohibits lockouts and strikes, and limits working hours.³⁷ The statute requires that each trade, industry, or other economic complex be organized at various levels into unions (of employees), federations (of employers), and nationally into employers' guilds and national syndicates of employees. The guild and national syndicate of a particular trade combine to form the corporation for that trade. The corporation is supposed to work out the trade's own internal problems and is represented in the corporative chamber.

As strikes are forbidden, labor disputes are settled by compulsory arbitration before tribunals created by the National Institute of Labor and Social Welfare.

Opposition. According to Salazar's admirers his genius for government finance and general benevolence has made him the idol of Portugal. Of course all governments, however generally admired, have some ungrateful opponents. Under a dictatorship such opposition is generally repressed and forced out of existence or into illegal channels. Salazar had no sooner founded his National Union than strikes and riots broke out in many places. Many of the former political leaders had fled to Paris and Salazar's friends attributed the troubles to their instigation. Despite such disturbances, occasional bombings and attempts at assassination, the Salazar government has been the mildest of all the dictatorships in its repressive measures. Before the Spanish civil war, criticism of the government in a public place was not likely to involve the critic with the police. During the Spanish civil war the régime tightened its discipline over the populace. In 1936 the *Mocidade Portuguesa* (Portuguese Youth) was

³⁷ Some light is cast on Portuguese labor conditions by the provision in the statute that henceforward all workers shall be guaranteed one day's vacation on full pay per annum.

founded and membership in it made compulsory for all boys between seven and fourteen. At the same time the Portuguese Legion was formed—a paramilitary organization of Salazar's adherents like the party armies of Hitler and Mussolini. The minister of the interior is in charge of both regular and secret police. The latter are empowered to arrest without warrant when "security" is involved and members of the underground opposition have been imprisoned or sent to concentration camps in the colonies.³⁸

Consistently since that time the Salazar dictatorship has maintained itself in power without apparent difficulty. Elections produce no excitement. The pre-Salazar military dictator, General Carmona, was kept in the presidency for more than twenty years and then succeeded by General Craveiro Lopes in July, 1951. For some time before this, President Carmona had been relegated to a position of impotence. The presidency, however, is potentially very powerful, for *any* president, strong or weak, has the constitutional power to dismiss the government and appoint a new ministry, call for constitutional revision, and utterly change the régime. It is a matter of some astonishment, therefore, that the Salazar government has actually permitted opposition candidates to be nominated, although it takes care to load the dice heavily against such candidates by refusing to permit any campaigning until thirty days before the election. As parties are forbidden, this means that the entire campaign has to be organized and fought under impossible conditions for the opposition candidate.

An opposition candidate was permitted in the presidential elections of February, 1949. This was General Norton de Mattos who announced his candidacy the preceding July. No real campaign was allowed but there was a partial relaxing of press censorship. Norton de Mattos withdrew his name two days before the election on the ground that the vote would be unfree. His supporters were heterogeneous politically and agreed only in disliking Salazar. Norton de Mattos appeared to court the Communists and did not allay the fears of the church and the army that his election would be unfortunate for their privileges. The unopposed official candidate received the votes of almost all who voted—about 77 per cent of the electorate.

In July, 1951, an unofficial candidate again was permitted to run. This time he did not campaign on an anti-Salazar platform, but merely called for some restoration of civil liberties and a clean-up of graft in the administration. This candidate, Admiral de Quintão Meireles, also withdrew his name at the last minute, and the government candidate, General Craveiro Lopes, was elected by acclamation. The only other prospective candidate, Ruy Luis

³⁸ Ordinary citizens who are so unwary as to be overheard denouncing the regime are more likely to be given a short jail sentence, treated and fed very well, and presented with a bill for their "accommodation" when they are released!

Gomes, was rejected as a candidate by action of the supreme court. This power in the hands of the court ensures that no candidate can be nominated who represents a real danger to the régime. Why Salazar allows even this much opposition is a difficult question. Perhaps because he is confident of his popularity and because he wishes to discourage the development of underground opposition by tolerating a safe amount of public opposition. It has been alleged that he would like to have an actual opposition represented in the government so long as it could be kept "tame" and powerless to do more than criticize.

The Salazar dictatorship is interesting to the political scientist because it has almost as many points of difference from standard Fascist governments as it has in common with them. It has many resemblances to the French State which Marshal Pétain tried to establish. Because Salazar is a deeply pious Catholic there is no claim on his part to set the state over all other institutions including the Catholic Church. For the same reason, Salazar can never be guilty of the worst excesses of nationalism with its emphasis on racism. Education of youth, for the same reason again, is not a state monopoly but is left to the traditional Catholic schools. Salazar describes the New State as *authoritarian* but not *totalitarian*. Unlike other dictators, Salazar himself shuns publicity and is said to lead an ascetic life. The autocracy most resembles fascism in its management of the economy with labor reduced to a mere suppliant for government favors and unable to strike or act directly in its own interest without breaking the law and incurring heavy penalties.

Possibly the relative mildness of Salazar's autocracy is due to the fact that actually it has given Portugal a government in many ways superior to any other enjoyed by that country in modern times. Quite possibly a genuine majority of the Portuguese people are more than willing to submit to Salazar's autocracy in order to enjoy the benefits of social and civic order, a stable currency, and a society based upon the traditional values. The government had no trouble in quelling the disorders that represented a response to the excitations of the civil war in Spain.

Even if the Portuguese people are largely satisfied, it may be doubted that Salazar has justified completely their loss of liberty with compensating economic and other benefits. Portuguese agriculture is backward, the soil is poor, and increased production has hardly made up for population growth. Many are chronically underfed.³⁹ Illiteracy is still rife and the twenty years of the dictatorship have seen little improvement in education.⁴⁰ An old-fashioned

³⁹ The average daily calorie intake is estimated at 2,300, which is very low for persons doing hard work.

⁴⁰ Possibly Salazar has little interest in educating the peasantry "above their station in life."

mercantilist approach to colonial economy has meant that they have failed to develop their resources and attract few immigrants, even though, since 1947, there has been an embargo on emigration to Brazil. War-induced prosperity was too largely used for imported motor cars and other luxuries rather than for basic capital goods. Nevertheless, there is no indication of any serious loss in popularity by the régime and the present prospects of a liberal opposition triumph are far from bright. But if Lord Acton's adage about the corrupting effects of absolutism be true, the New State will not forever be able to escape this blight.

1. Switzerland. The basic histories, not available in translation, are Karl Dandliker, *Geschichte der Schweiz*, 3 Vols. (Zürich, 1893-1895), and Johannes Dierauer, *Geschichte der Schweizerischen Eidgenossenschaft*, 6 Vols. (Gotha, 1897-1931). The best short survey in English is J. Christopher Herold, *The Swiss Without Halos* (New York, 1948). This book discusses Swiss literature, art, and history as well as government and is written in a lively and highly entertaining style. A standard textbook is W. E. Rappard, *The Government of Switzerland* (New York, 1936). Attention should also be called to H. Huber, *How Switzerland is Governed* (Zürich, 1947), and A. Siegfried, *Switzerland: A Democratic Way of Life* (London, 1950). Still useful are the older books by R. C. Brooks, *The Government and Politics of Switzerland* (New York, 1918), and *Civic Training in Switzerland: A Study of Democratic Life* (Chicago, 1930). Also of interest are Félix Bonjour, *Real Democracy in Operation: The Example of Switzerland* (New York, 1920); Edgar Bonjour, *Swiss Neutrality, its History and Meaning*, trans. by Mary Hottinger (London, 1946); Denis de Rougemont and Charlotte Muret, *The Heart of Europe* (New York, 1941).

2. The Scandinavian Kingdoms. The best over-all survey is Ben A. Arneson, *The Democratic Monarchies of Scandinavia*, 2nd ed. (New York, 1949). Brief descriptions are contained in R. V. Peel, "Scandinavian Political and Constitutional Development" in J. K. Pollock (ed.), *Change and Crisis in European Government* (New York, 1947), and N. Herlitz and J. H. Wuorinen, "The Government and Politics of the Scandinavian Countries" in J. T. Shotwell (ed.), *Governments of Continental Europe* (New York, 1940). See also G. R. Nelson, *Social Welfare in Scandinavia* (Copenhagen, 1953). Other less recent but still useful books are N. Herlitz, *Sweden: A Modern Democracy on Ancient Foundations* (Minneapolis, 1939), and M. Cole and C. Smith (eds.), *Democratic Sweden* (London, 1938). Swedish welfare activities are covered with somewhat uncritical enthusiasm in Marquis W. Childs, *Sweden, the Middle Way* (New York, 1948), and similar Norwegian developments in O. B. Grimley, *The New Norway* (Oslo, 1937). For a recent survey of Norwegian history, K. Larsen, *A History of Norway* (New York, 1948). Attention should also be called to N. Afzelius, *Books in English on Sweden* (3rd Ed., Stockholm, 1952), and to a survey of Political Science in Sweden by Sarah Scott Thorelli, "Political Science in Sweden" in the *American Political Science Review*, Vol. XLIV, (December, 1950). For a description of special characteristics of the Scandinavian countries, see F. D. Scott, *The United*

States and Scandinavia (Cambridge, Mass., 1950). For a history of Denmark, see J. Danstrup, *History of Denmark* (Copenhagen, 1948). See also E. Eriksen, "Denmark's New Constitutions," in the *Danish Foreign Office Journal* No. 8 (1953).

3. The Iberian Dictatorships. A good, reliable history is H. D. Sedgwick, *Spain, a Short History* (New York, 1925). Recent histories include Graeme Mercer Adam, *Spain and Portugal* (New York, 1936); Salvador de Madariaga, *Spain* (New York, 1943); H. V. Livermore, *A History of Portugal* (Cambridge, 1947); and R. Altamira y Crevea, *A History of Spain*, (New York, 1950). Some understanding of Spanish life and character can be gleaned from George Borrow's classic *The Bible in Spain*, first published in 1842 and available in the Everyman's Library edition. Spanish politics is treated in Gerald Brenan, *The Spanish Labyrinth*, 2nd ed., (Cambridge, 1950), and Frank Edward Manuel, *The Politics of Modern Spain* (New York, 1938).

An account of the stormy and unstable political situation before the Franco uprising can be found in Edward Conze, *Spain Today* (New York, 1936). Emmet John Hughes, *Report from Spain* (London and New York, 1947) is a well-written account of the internal politics of the Franco regime. A highly unflattering account of Franco's politics is given by a former Associated Press correspondent, Charles Foltz, Jr., in his *The Masquerade in Spain* (Cambridge, Mass., 1948). The apologia for the dictatorship can be read in the official Franco biographies, Joaquin Arraras, *Francisco Franco: The Times and the Man* (Milwaukee, 1938), and the untranslated Fernando de Valdesoto, *Francisco Franco* (Madrid, 1943). Additional bibliography is contained in the book by Charles Foltz, Jr., mentioned above and in Carlton J. H. Hayes, *The United States and Spain* (New York, 1951).

Salazar's ideas are expounded in his own book: Antonio de Oliveira Salazar, *Doctrine and Action; Internal and Foreign Policy of the New Portugal*, 1928-1939, trans. by R. E. Broughton (London, 1939). Some highly laudatory accounts of the New State have been written by foreign observers. An example of these is Michael Derrick, *The Portugal of Salazar* (New York, 1939). For a short history of Portugal, see H. V. Livermore, *History of Portugal* (London, 1947). Several of the Foreign Policy Reports of the Foreign Policy Association are of interest. On Spain see Vol. XII, Nos. 20 and 21 (1937); Vol. X, No. 5 (1940); Vol. XXIII, No. 10 (1947); Vol. XXV, No. 4 (1949). The last also contains a report on Portugal. See also A. Marvaud, "L'Actualité du Portugal" in *Revue Politique et Parlementaire* (January-February, 1953) and A. F. Loveday, "Spanish Affairs" in *Quarterly Review* (October, 1953).

CHAPTER XLV

The Government of Japan

Every nation must live upon the lines of its own experience. Nations are no more capable of borrowing experience than individuals are.—Woodrow Wilson

A word of explanation. In a book on European governments for American readers it may seem irrelevant to include, even as a supplement, a chapter on the government of Japan. Yet this government was formerly based upon European forms and today is essentially a combination of British parliamentary practice and American features. One of the great political scientists of an earlier generation, in the quotation which heads this chapter, declared that no nation can borrow successfully the experience of others. But Japan has done so, not only once but twice. Both times, to be sure, the borrowing was not entirely voluntary but resulted from the forceful impact of the outside world. Nevertheless, the Japanese copied the foreign models assiduously. Their governmental scheme of the last century they copied from Prussia, their banking system from England, and their jurisprudences reflect the genius of Roman civil law. Except for the emperor-god, few Japanese political institutions were truly native to Japan.

Our interest in Japan. There are other reasons why this government should be of interest to Americans. In the first place, we, through our government and our representatives, General MacArthur and his associates, are primarily responsible for the present Japanese constitution as well as many social reforms following the Second World War. Our interest in a peaceful and prosperous Japan is equivalent to our interest in the preservation of the free world in the far Pacific. Japan's problems, in a sense, are our problems too.

Area, population, and resources. Japan is a tiny country, for it now consists of the home islands only. The sun has set upon the Japanese Empire that included Formosa and other islands (taken from China in 1895), the southern half of Sakhalin Island (a prize of the war with Russia in 1905),

and the various islands in the South Pacific, formerly German, which went to Japan after the First World War. In addition, Manchuria, although technically not part of the empire, had become an integral part of it in reality before the outbreak of the Second World War, and Japan had taken over a considerable part of China as well. Today the total area of Japan is about that of California, but the population is estimated (as of 1953) at 86,000,000, with an annual net increase of about 1,000,000. The population density is far greater than that of any American state. Japan is a beautiful country with a rugged coastline and many mountains. For the same reason, only about one-fifth of the land area is arable, and despite the intensity of Japanese cultivation the present population would starve if food imports ceased. There are few basic natural resources. Most of the raw materials for industry must be imported. That a country so isolated from the civilized world and so poor in resources should so quickly have become a great industrial power is one of the miracles of modern civilization.

Early history. The history of Japan in remote times is lost in a mist of legend. Undoubtedly the Japanese are an amalgam of the many invading tribes that landed on the islands from time to time, fought and intermingled with the aboriginal, primitive Ainu, and gradually pushed the latter back into the northern island. These invaders in all likelihood came from Korea as well as from the China coast and included Mongols, Chinese, and probably also Malaysians and Polynesians. Various tribes settled in different localities. One which settled finally in the plain near the present Kyoto was dominated by the Yamato clan. The priest-chiefs of this clan gradually extended their authority over surrounding clans and the cult of their legendary ancestress, the Sun Goddess, was accepted by the other clans until in time it became the basis of the national Shinto religion. By the third or fourth century A.D., the Yamato chiefs had obtained a recognition of paramountcy from all the other clan priest-chiefs. From them is descended the imperial family.¹

Despite the imperial claims of the Yamato dynasty they were unable to prevent the development of a strong feudal society in which the local lords were able to maintain their primacy in their own domains, free of imperial taxes. As a result the central administration became largely a paper affair without revenue and without authority. The emperor, notwithstanding the reverence accorded him as a divinity, simply lived on the income of his own estates, like any other lord. Genuine national rulership was finally gained in the twelfth century by a leader of one of the powerful provincial clans, the

¹ The official legend dates the imperial establishment about a thousand years earlier and claims divine descent for the Yamato chiefs from the Sun Goddess. This divinity extends to all the imperial descendants.

Minamoto. The Japanese have always preferred to keep the surface of their institutions unchanged, however profoundly they alter the actuality underneath. In characteristic fashion, therefore, the Minamoto left the emperor at Kyoto to rule his shadow empire and took over the genuine power under the title of *shogun*, or "generalissimo."² This power was enforced through control of the knightly families (*samurai*) and the great lords (*daimyos*) who lived on their estates throughout Japan and who were tied to the shogun by feudal loyalty.

And the great Tokugawa shoguns. But the shogun did it all in the emperor's name. His position was that of a hereditary regent, not merely during the emperor's minority but during his entire reign. While each successive shogun was formally invested with his office by the emperor, he ruled without consulting the latter. At the beginning of the seventeenth century the shogunate passed to members of the Tokugawa clan, who held it for more than 250 years, with their capital at Yedo (now Tokyo) while the emperor had his capital at Kyoto. Great shoguns there were during the early part of the Tokugawa era, especially Ieyasu and his grandson Iyemitsu, whose achievements have been superbly memorialized in the great Temple of the Shoguns at Nikko—visited without fail by every American tourist to Japan.

The old councils. The shoguns were assisted in their task of governing by two councils, one of elder statesmen and one of younger advisers. Members of the former held office for life and filled vacancies in their own ranks. They also appointed their junior associates. It was the function of the elder statesmen to prepare decrees for the shogun's signature, to serve as his ministers in carrying on the work of administration, and to supervise the feudal lords each of whom governed his own small domain. The members of the junior council assisted them in this work. Within each feudal fief the lord had his vassals or retainers (*samurai*), roughly corresponding to the knights in mediaeval Europe. Thus, although there was no historical connection between the two, European and Japanese feudalism developed along very similar lines.³

During the latter part of the Tokugawa supremacy forces were at work which undermined and rendered inappropriate its mediaeval institutions. Chinese culture had been absorbed and transformed into something essentially Japanese. The study of history and the wide distribution of the Shinto cults emphasized the importance of the imperial family and stimulated a national consciousness. Many great commercial centers had grown up and the powerful merchant class could no longer be ignored, even though the antique code of the knights placed them socially below the peasants. The Tokugawa foreign

² His complete title was "Barbarian-subduing Generalissimo."

³ In this connection it may be noted that the Japanese, alone among Far Eastern peoples, invented a system of armorial bearings used by the knightly and noble class astonishingly similar to the coats of arms of the chivalry of Europe.

policy was to seal Japan away from all contact with the outside world—to practice absolute isolationism. No Japanese might leave the country (large ships were not allowed to be built), and any foreigner landing in Japan was to be executed at once. But both Europeans and Americans were anxious to trade in Japan and to use Japanese ports. The Americans made the necessary first move. In July, 1853, Commodore Perry led an American naval force into Tokyo Bay and demanded trading rights. The shogun was nonplused. It was obvious that American ships and guns were much too formidable to be resisted successfully, and despite demands by Japanese conservatives that the foreigners be repulsed at whatever cost, a trade treaty was signed in 1854, opening two ports to American vessels and allowing trade under regulation. It was not long before Japan was thrown wide open to the Europeans as well.

The shogunate had already been undermined by economic and social changes. Despite his best efforts, the shogun had never been able to count upon the complete loyalty of some of the feudal lords. The basis of feudal rule was peasant agriculture and both shogun and daimyos tended to live beyond their means, squeezing their incomes out of the samurai and peasantry. The feudal lords tried to monopolize or forbid new developments in commerce and industry, but succeeded only in arousing resentment among the new capitalist class. When the door to the outside world was opened, the Japanese economy was suddenly thrown out of gear. Prices rose sharply and the samurai class, living on fixed stipends, was hard hit. The inability of the shogun to meet the crisis was evident. He lost prestige and his enemies raised the cry: "Revere the Emperor and expel the Barbarians." There was little the shogun could do except resign. In the winter of 1867 the emperor issued a decree deposing him and early in 1868 he was ordered to hand over his revenues and his provinces (about one quarter of Japan). His refusal to do this led to a short civil war. The imperial government had organized a new peasant army on modern lines and it soon overcame the shogun's samurai.

Japanese feudalism abolished (1888). Following the termination of the shogunate came the abolition of the entire feudal system. This was accomplished by an imperial rescript under which the ownership of the land was transferred from the feudal lords to the emperor. Most of the lords had assented to this transfer before it was officially decreed, being won over by promises of various compensations. Class privileges were also abolished, and the feudal knights (samurai) who had formerly been forbidden to engage in business were now allowed to do so. And for the first time all Japanese were made equal before the law, even though in due course the former feudal lords, as well as the older civilian nobles, were given hereditary titles after the European fashion—prince, marquise, count, and baron.

THE MEIJI RESTORATION AND THE CONSTITUTION OF 1889⁴

Abortive attempts at democracy. The destruction of the Tokugawa shogunate did not settle the question of who was now to exercise power nor by what means. Only one thing was sure: the restoration increased the emperor's prestige but there was no intention of giving him actual power. Those who had participated in the anti-Tokugawa movement were by no means agreed as to the form to be taken by the new governmental machinery. In his resignation document the last shogun had indicated that he expected a bicameral assembly to be created. On April 7, 1868, a charter oath was issued with the emperor's approval of which the first article was: "Assemblies shall be convoked and all measures decided by open discussion." On the basis of this declaration a constitution was drafted providing for a bicameral body with separation of powers.⁵ Its basis, however, was still feudal and it failed to work well. Other assemblies were tried but they accomplished nothing, partly because they contained both Westernized liberals and old-fashioned reactionaries who could not agree, and partly because the central authorities and bureaucracy were not disposed to work with a representative assembly. The authorities recognized that there was considerable demand for a representative element in the government and wanted to satisfy this demand without interfering with their own control of affairs. When, in 1881, an imperial rescript promised a parliament by 1890, political parties began to appear and mass meetings were held. Economic distress led some of the extremists to attempt reform by violence. The revolts were crushed without difficulty and the clamor for liberal governmental institutions died away with the economic upturn after 1885 and the new constitution of 1889.

The constitution of 1889. The constitution, which endured until after the Second World War, was the product of imperial officials who had studied European governments. No further attempt was made to adapt American republican institutions, but an examination was made of constitutional monarchies. Of these, the Prussian government had most appeal to the Japanese statesmen. Prussia had a parliamentary system modeled on the British, but with a prime minister responsible to the king only. This seemed entirely suitable to the conservative Japanese who took it as the basis of their plan.⁶ It was successful in achieving its purpose—to provide the new Meiji autocracy with a constitutional basis.

The emperor. The divine emperor remained the national symbol in whose

⁴ The name "Meiji" was the name given to the reign of the "restored" emperor, as "Showa" is the reign-name of the present emperor, Hirohito.

⁵ The drafting officials made use of American books including the United States constitution.

⁶ The study was made under the direction of Ito Hirobumi, who selected Prussia for his personal investigations and who consulted the extremely conservative jurists Professors Rudolf von Gneist and Lorenz von Stein.

name everything was done. The constitution gave him all power, including the exclusive right to suggest constitutional amendments. At the same time all of his acts were valid only on the advice of his ministers and officials. It was not in the Japanese tradition that the emperor should exercise real power, and there is no evidence that the personal influence of the present emperor, Hirohito, was ever important in council.⁷

Two officials who were close to the throne and often influential were the lord keeper of the privy seal and the imperial household minister. The privy council was also important, far more so than its British namesake. This body had been created by imperial ordinance to serve until the new constitution could be put into effect but it remained as a kind of enlarged cabinet with fairly general review powers over policies and legislation. At times it had greater importance and influence than the cabinet. It consisted of twenty-six life members appointed on the advice of the premier and with the consent of the existing membership of the privy council, together with all cabinet ministers as *ex officio* members.

The independence of the military. The constitution provided for a separation between civilian and military advisers that placed the latter in a very strong position in any contest for power. A supreme war council enjoyed the right of direct access to the emperor and so outranked the cabinet in this respect. This council had to approve the appointments of ministers of war and navy, who were always career officers. By withholding approval the council could prevent the formation of a cabinet, and by requiring the two ministers to resign, could force the cabinet out of office.

The cabinet. The prime minister was appointed by the emperor after consultation with the lord keeper of the privy seal, the imperial household minister, the president of the privy council, and other officials. It was not at all necessary that he be the recognized leader of a major political party. Once appointed, the prime minister would pick his cabinet consisting of a dozen or so department heads and other ministers without portfolio.

The *genro*. An unofficial body of great prestige, whose advice was likely to be weighty in times of crisis, was the *genro* or small group of elder statesmen who had been influential in the imperial restoration. The last of these, Prince Saionji, died in 1940. A somewhat similar group, but of much less prestige, is called the *jushin* or senior statesmen. It consists of ex-prime ministers.

The diet. The Japanese parliament, called the diet, consisted of two chambers: the House of Peers and the House of Representatives. The former, a

⁷ At any rate, until the end of the Second World War. There is evidence that the emperor favored surrender and helped to secure the adoption of this policy in the supreme war direction council by the unprecedented use of his personal intervention.

body of some 400 members, was made up of the former great feudal lords, the daimyos, who were given the titles of prince or marquis. The lesser nobility, counts and barons, elected representatives from among themselves. In addition there was representation of the largest taxpayers, the Imperial Academy, and 125 life peers appointed by the emperor for distinguished service.

The House of Representatives had 466 members elected from multi-member districts for a four-year term by a restricted electorate of adult males.⁸

Power of the purse. Of the greatest importance was the fact that the diet had no real control over the public purse. According to law, if the budget failed to pass, that of the previous year remained in force. In addition, there was a fixed civil and military list over which the diet had no control at all. Under these circumstances, and in consideration of the powerful position of the professional military chiefs, it is quite understandable why Japan did not develop responsible government.

Centralized local government. Nor was there genuine local self-government. The men who managed the restoration were anxious to smash the feudal rule of the daimyos and centralize power in the emperor—really, of course, in themselves. Accordingly they ignored the boundaries of the ancient lordships, as the French republicans had ignored the historic counties and duchies, and created about forty prefectures on the French model. The prefectural governor and other lesser officials were appointed by the minister of home affairs (corresponding to the French minister of the interior) and were responsible to the ministry. Like the prewar French prefect, the governor had considerable authority over the locally elected bodies. Furthermore, the police, even in the great cities, were national, not municipal. Education, too, was nationally organized and controlled.⁹

Civil rights. Another borrowing from abroad, entirely foreign to Japanese ideas and history, was the notion of individual rights. Although the constitution contained a list of such rights, essentially similar to those with which we are familiar, all were made subject to alteration or definition by law and so in no case represented a firm limitation upon the government. Further, they were not applicable as against administrative authority. It should be remembered that the Japanese had no tradition of civil liberties, that they had emerged recently from what was not only a feudal but almost a totalitarian autocracy, and that there was neither understanding of, nor demand for, such rights by the mass of the citizens.

⁸ The franchise was narrow. In a population of 50,000,000 there were only about 460,000 voters.

⁹ It is said that in each grade, every teacher in Japan taught the same lesson at the same hour.

The judiciary. The courts and judges were set up in imitation of European models. The law itself was based on the German civil code and therefore, fundamentally, on Roman law, although certain portions were codifications of Japanese customary rules. The judges, in theory, enjoyed a proper independence of political authority, but in fact, they were subject to considerable pressure because judicial promotions were controlled by the minister of justice and because, as Japanese, they had a strong disposition to defer to officialdom.¹⁰

JAPANESE POLITICS

The new constitution was a façade behind which the age-old pattern of Japanese government was still followed. The government was still an autocracy, governing in the name of a powerless emperor whose “divinity” actually limited his participation in public life. The representation provided for ordinary citizens in the lower house of the diet did not limit the autocracy to any serious extent. Instead the real struggle for power was between the restoration autocrats and the professional military men who led the new mass army.

Political factors: 1. The zaibatsu. A complicating factor was the rising class of big businessmen who had backed the restoration or had grown important since that time on the expanding commerce and industry of Japan. The leaders were the chief figures in the *zaibatsu*, the great semimonopolies that controlled the larger part of the Japanese economy. At first this class had thrown its weight against the military and its plans for imperial expansion. As a counterbalance they supported the new political parties that had grown up in imitation of the West. With such support, the diet gradually gained in importance and began to have an influence in the choice of prime minister. However, after the successful military coup in Manchuria and the opportunities opened there to Japanese capital, the heavy industry section of the *zaibatsu* began to support the military adventurers.

2. Political parties. Japanese political parties at first were little more than parliamentary cliques with court or official connections. After the introduction of manhood suffrage in 1925, some of the parties made an effort to secure mass support. The two largest parties were the Seiyukai and the Minseito. The former had considerable strength among the landlord class and was more conservative than the Minseito. Neither party had extensive popular support. When the *zaibatsu* threw their weight into the military side of the political scales, the parties became less important and the diet ceased to be a decisive

¹⁰ The acceptance of foreign law and judicial arrangements was motivated, in part at least, by the intention to give the Europeans no excuse to continue extraterritorial judicial privileges for their nationals.

factor in Japanese politics. The parties fell into line and did not object to their own dissolution in 1940.

The failure of Japanese democracy. Conceivably, under more favorable circumstances, the Japanese might have learned the techniques of representative democracy. In time the parties might have become firmly rooted in the electorate, genuine representatives of the popular will, and strong enough to become a preponderant force in government. This would have taken more time than was, in fact, available. The centuries of Tokugawa absolutism had conditioned the Japanese people to submission and had given them no training in self-government. A subsistence standard of living for both the peasantry and the industrial workmen together with a limited education designed to foster uncritical nationalism meant that foreign liberal notions were familiar only to a few intellectuals. When the world-wide depression of the thirties threatened to lower the already austere Japanese living standard to a starvation level, it was natural for the people to look for salvation to military rather than to party leaders. Enlightened Japanese politicians who sought a peaceful solution of Japan's problems came to be regarded as traitors. Several of the most important were assassinated in February, 1936, by soldiers led by a group of young army officers. The development of the war with China silenced the remaining opposition to the military dictatorship which was crowned by the formation of the Tojo cabinet in October, 1941.

Previously, in 1940, all the political parties had been absorbed by the Imperial Rule Assistance Association, together with many other groups such as the labor unions, trade associations, and patriotic societies. The new IRAA was a universal "movement" rather than a party. Like such national movements in the fascist countries it had several purposes: to give the government control of all group activities, to silence all opposition, to give the people the illusion of participation, and to strengthen their self-identification with the government. Even without the parties, a few unsponsored independents were elected to the diet in 1942, but the entire parliament organized itself into the Imperial Rule Assistance Political Society, effectively silencing all opposition opinion.

THE UNCONDITIONAL SURRENDER AND AFTERWARD

The Japanese surrender did not bring about a collapse of Japanese government and administration. It is almost incredible that such a complete military disaster would not induce a repudiation of the old symbols of government, as happened in Germany in 1918 and 1945. Not so in Japan. Loyalty to the emperor was unaffected. The Japanese obeyed his order to submit willingly to Allied occupation as completely as they had accepted the order to fight. The

entire governmental system suspended from this human symbol of "divine rule" was similarly unaffected and remained in working order everywhere. The occupation authorities wisely retained the imperial symbol and used it to guarantee the maintenance of order and discipline throughout the country. A few die-hard militarists committed suicide in line with ancient tradition, but the rest of the population accepted surrender without complaint.

THE ALLIED OCCUPATION

In two respects our occupation harmonized with Japanese traditions: The emperor remained a figurehead while General MacArthur became the "shogun" with real power. Secondly, the new authority instituted reforms by decree from above, as all Japanese reforms have been instituted. The reforms were accepted, as the surrender had been, without complaint. At the same time it should be observed that the Japanese have become past masters at preserving complete outward respect for authority and its symbols while finding ways and means of operating behind the symbols to get what they want.

The main provisions of Allied policy as laid down in July, 1945, included: unconditional Japanese surrender, punishment of war criminals, removal of militarists from all positions of authority, abolition of the Japanese Empire, complete disarmament and destruction of war industries, and the introduction of civil liberties and a democratic government.

The Supreme Commander for the Allied Powers (SCAP), General MacArthur, became in effect the dictator of Japan. Although a Far Eastern Commission was set up later to issue directives, these had little effect upon the MacArthur policies. The general chose to operate through existing Japanese administrative machinery. He required, therefore, only a small headquarters staff and field teams in each prefecture to check on the effectiveness of his directives. Under the supervision of SCAP, the Japanese proceeded to carry out the policies listed above.

Disarmament. Although all stocks of weapons were destroyed, Japan's basic war potential was not seriously affected because there was little destruction of heavy industry. Before this part of the program had been well started the emphasis had shifted to the revival of the Japanese economy. The really serious loss to Japan was that of her former empire, which contained, especially in Korea and Manchuria, a substantial amount of heavy industry.

Demilitarization. The war criminal trials were probably of more use in satisfying our sense of justice than in producing any reformation of Japanese character. The Japanese have no sense of guilt. Indeed, the concept of "guilt" is foreign to their system of morals which rest rather upon "shame" sanctions. All that one can say is that the removal from public life of such leaders as

Tojo was highly desirable. SCAP also ordered the cessation of all state aid to the Shinto cult and its removal from any connection with the schools. State Shinto had been a kind of ceremonial patriotism with religious overtones, not to be identified with the various Shinto religious cults, offshoots of the primitive Japanese religion that antedated the introduction of Buddhism from China. As a necessary item in this de-emphasis of Shinto, the emperor issued a rescript on January 1, 1946, denying his own divinity.

THE CONSTITUTION OF 1945

The new government: general outline. The new constitution was drafted by SCAP and virtually forced upon the reluctant Japanese government.¹¹ It was approved in November, 1946, and went into effect May 3, 1947. Nineteenth-century Prussia was no longer the model. As one would expect, the United States was now an important source, with Great Britain the model as regards the crown and parliament. To begin with, the constitution stated that "sovereign power resides with the people," a thoroughly un-Japanese idea. The emperor became a simple constitutional monarch. The diet became a supreme legislature with the executive responsible to it at all times. Local government was decentralized. A bill of rights was established, valid as against officialdom and enforceable in the courts, which also were given the power of judicial review in the American fashion.

The emperor. The emperor became a constitutional monarch without personal authority. The Imperial Household Law was placed under parliament and the imperial income made dependent upon parliamentary appropriation.

The diet. The diet, a bicameral body, how became as supreme as the English parliament with one exception: the right of the Supreme Court to disallow unconstitutional legislation. For the rest it was now given the power of the purse without restriction and was declared to be the "sole lawmaking organ" with full power to initiate legislation.

House of Representatives. The more important chamber was called the House of Representatives. It consists of 466 members elected by universal suffrage (at age 20) for a four-year term. The members are elected from small multi-member districts in which the voters vote for one name only. The prime minister and his cabinet are responsible to the House of Representatives at all times, and if they cannot secure a vote of confidence must either resign or dissolve the House and hold a new election at once.

¹¹ The Japanese at first argued against any new constitution at all. Then, under pressure, they created a Constitutional Problem Investigation Committee which submitted a report suggesting only minor changes. SCAP thereupon wrote the constitution itself. The language was obviously American rather than Japanese in spirit and some Japanese complained that the document read in Japanese like a translation from the English.

House of Councillors. The second chamber, the House of Councillors, no longer contains an hereditary peerage. The same electorate as for the House picks the councillors, who number 250. The districts, however, are not the same. One hundred are elected at large and 150 from the prefectures. American influence is seen in the provision that one-half of the councillors retire each three years. In another respect the House of Councillors does not resemble our Senate. It is much inferior in power to the other chamber. Its ability to hold up legislation is strictly limited, and its adverse votes can be overridden by two-thirds of a quorum in the House of Representatives. Unlike the latter chamber, it cannot be dissolved, but it holds sessions during the nonexistence of a House of Representatives only upon emergency summons by the cabinet, and any action taken is subject to subsequent approval or rejection by the first chamber after the elections.

Sessions of the diet. The new diet holds regular five-month sessions, as contrasted with the three-month meetings of the prewar diet. The diet can, at will, prolong its sessions beyond this period. The Diet Law of 1947 tended to strengthen the hold over the executive by providing that the cabinet must report to parliament and must submit documents on request.

The prime minister and the cabinet. The diet selects one of its own members as prime minister. He is formally appointed by the Emperor and then picks his cabinet, a majority of whom must be members of the diet. To begin with, the war, navy and home ministries were abolished, the latter because of its thought-control police. But a small "national safety force" was organized in 1952 and its chief, on July 1, 1954, became the first minister of defense with the creation of this ministry. The cabinet is now the genuine top executive body with no overshadowing privy council, for this body, too, was abolished. But the power to issue ordinances or executive orders, which formerly was used extensively for legislation, is limited by the constitution to use in connection with the constitution itself or in accordance with laws passed by parliament.

Local government. American federal ideas can be observed in connection with the new local government arrangements. Instead of being appointed in Tokyo, not only the lesser local authorities but even the prefectural governors are now elected in the locality. Elections are held under the control of local committees instead of national authorities as formerly. An important change was the decentralization of police. A national police force still exists for the smaller villages and rural areas, but Japanese cities and towns of 5,000 population and over may now recruit and control their own police. In order to assure the political impartiality of the remaining national police, they have

been placed under a body reminiscent of an American independent agency. This is the National Public Safety Commission of five civilian members appointed by the prime minister for staggered terms. Not more than two of the five may belong to the same political party. On July 1, 1954, all police were nationalized and placed under this commission. Japan seems to be well on the way toward a re-centralization of authority.¹²

Civil rights and the judiciary. Here again we can see American ideas at work. There is European influence, too, perhaps, in the inclusion of social welfare rights as well as the usual civil liberties. In line with Anglo-American practice the separate administrative court system has been abolished. The ordinary courts now try cases involving alleged breaches of law by officials, and the legal right of the ordinary citizen to sue officials has been extended.

The Supreme Court consists of fifteen judges including its president. At least ten of the judges must have high judicial qualifications. They are appointed for a term of ten years by the cabinet.¹³

A curious provision is that the reappointment of Supreme Court judges at the end of their ten-year term is dependent upon a popular referendum. The Supreme Court is not only the final court of appeals, enjoying the power of constitutional review of legislation, but also has general administrative supervision over the rest of the judiciary. Impeachment proceedings against lower court judges may be commenced by anybody. The accusations are heard by a special committee consisting of fourteen members, half from each house of the diet.

Ancillary reforms: 1. Business. Evidently the Japanese people are now provided with a constitution designed to permit the free development of popular opinion and its translation into policy by a government entirely responsible to the electorate. SCAP recognized the fact that democratic institutions, however well designed, will work as they should only if the society they serve is also democratic. It was felt necessary, therefore, to change certain fundamental Japanese social and economic institutions as well. An attempt was made to break up the zaibatsu combinations that controlled the greater part of Japanese industry and commerce. Top holding companies were dissolved, certain rich and powerful individuals were required to hand over their securities. The companies and individuals were paid in nontransferrable government bonds which could not be cashed for ten years. The assets were taken over by a holding company liquidation commission to be sold to small investors. But

¹² A disquieting feature of the first budget submitted to parliament following Japan's return to sovereign status (1953) was the increase in centralization it indicated. Many localities seem unwilling to tax themselves for services formerly paid for and administered by national authorities.

¹³ The president is appointed by the emperor on nomination by the cabinet. The other judges are appointed directly by the cabinet which also appoints the judges of inferior courts.

few small investors were available to buy the securities. Much remained unsold. When the emphasis began to be placed on a revived Japanese economy the whole program slowed to a halt. The Japanese government quickly amended the new antitrust law so that it is virtually useless.¹⁴

2. Labor. A Japanese "Wagner Act" guaranteeing the right of labor to organize was passed in December, 1945, and two years later a labor ministry was created. Japanese labor took advantage of the opportunity and the trades unions began to expand their membership at once. The unions are frequently dominated by doctrinaire Socialist leadership with a tendency to call political strikes. Here they ran afoul of SCAP, which interfered on several occasions to forbid strikes.

3. Agrarian reform. The landlord class, traditionally dominant in the rural areas, was heavily represented in the diet. As a consequence it took considerable pressure from SCAP to force through a law in 1946 to facilitate the purchase of their farms by tenants. Absentee landlords lost all their land, and resident landowners were allowed to retain a modest amount of tenanted land (from two and a half to ten acres, depending on the type) as well as a home farm of seven and a half to thirty acres. Larger farms were allowed in certain cases. Remaining tenants received protection in the matter of rents. The rest of the arable land was taken over by the government at a fixed price and resold to the tenants on easy terms. Because of the postwar inflation, farmers were receiving high prices for their products and many tenants were able to buy their farms at once. The long training of the Japanese peasant in subservience to social and official superiors has meant that the old landlord class has been able to retain much of its prestige and power in rural Japan despite this reform. Some of the former tenants even hesitated to farm the land newly acquired from the landlord. No doubt time will see a change in this attitude.

4. Public opinion. With the disappearance of police control over the expression of opinion and the freedom of the newspapers to print all the news to Japanese were encouraged to revel in their newfound freedom.¹⁵ Even women were freed to some extent from their age-old subservience to father, brother, and husband. They were given the vote and might no longer be sold into prostitution.¹⁶ Schoolbooks were replaced by new texts designed to stimulate thought rather than control it along official lines.

¹⁴ See the article by Eleanor M. Hadley, "Japan: Competition or Private Capitalism?" *Far Eastern Survey*, XVIII, 289-94 (Dec. 14, 1949).

¹⁵ Except that criticism of SCAP was not tolerated.

¹⁶ The women have used their voting privilege but seem usually to cast their ballots as directed by husband or father. Gradually they are becoming more aware politically and several have been elected to the House of Representatives. There is even an active Japanese League of Women Voters patterned after the American organization, with some 5,000 members.

It is difficult to say how effective these reforms have been in producing any fundamental change in Japanese ideals and behavior. Without previous experience in self-government the Japanese people continued to rely upon their old leaders. The militarists, of course, had to keep quiet and the patriotic societies had to go underground. The old business leadership is essentially the same as before the war. The old bureaucracy remained and together with the political leadership can do much to prevent substantial change while maintaining an impeccable attitude toward the American authorities. They are "sincere" in the Japanese but not the English sense of the word.¹⁷

POSTWAR POLITICS

The party system. When the Japanese parties began to reorganize under the new constitution they again displayed the characteristics of the prewar parties: a group of parliamentarians with supporters and associates among businessmen, landlords, and the bureaucracy, all cooperating to further their own special interests and enjoy the fruits of power with little genuine support among the general electorate. This was true especially of the largest and most conservative party, the *Minshijiyuto* (Democratic-Liberal party). This group is firmly connected with big business, the Imperial Household, and the administration. It managed to inherit much of the prewar Seiyukai vote-getting machinery. In the elections of January, 1949, this party doubled its former representation and won a majority of the seats (264) in the House of Representatives. Its leader is the present (1953) prime minister, Shigeru Yoshida. It is economically conservative, anti-Socialist, and has impeded the SCAP reforms as much as possible, consistent with a correctly subservient attitude. Its strength in the diet has enabled it to use patronage to consolidate its position. With greater independence it will favor the amendment and nullification of parts of the SCAP program. There is some evidence that the acceptance of the San Francisco peace treaty along with the mutual security pact has weakened the popularity of the Liberals and may lead to a loss of strength at the next elections.

The *Minshuto* (Democratic party) did poorly in the 1949 elections, dropping from 126 seats to 68, and subsequently split, losing some of its members to the Liberals. A conservative party, it has tried to hold a place somewhere to the left of the Liberals and has tried to form a working alliance with the Socialists. Both the Democrats and Liberals lost many prominent members during the SCAP purges of 1946-1947 intended to remove from influence all those closely connected with Japan's imperial adventures. Sub-

¹⁷ For a fascinating discussion of Japanese "sincerity" see Ruth Benedict, *The Chrysanthemum and the Sword* (Boston, 1946), pp. 160-161, 215-219.

sequently many of these have been depurged and are again prominent. The Democrats provided a prime minister, Hitoshi Ashida, for a short time in 1948 but lost face when he was indicted for corruption.

Another party which lost its importance as a result of the 1949 elections is the *Kokuminkyodoto* (People's Coöperative party) which tried to get the support of the peasantry as well as liberals and small businessmen.

The *Sakaito* (Socialist party) is rather like the French Socialist party in that it contains a wide variety of supporters from the rather conservative, mildly liberal element derived from the prewar Social Mass party through Second International Marxists to a left wing suspected of hiding some disguised Communists. It was a considerable party in the 1947 diet and furnished the prime minister for the government of May, 1947, to February, 1948. It lost heavily in 1949 and subsequently split into two distinct wings, both of which are well represented in the diet elected in 1952.

The *Kyosanto* (Communist party) has shrunk considerably in open membership since 1949 when it won thirty-five seats in the diet. At that time there were about 100,000 registered party members. By 1952 its open membership had shrunk to half that figure. Estimates of its underground membership vary from 25,000 to 50,000. Immediately after the war the Communists tried to form a mass party on the French or Italian model. They advocated mild reforms (many of them identical with those advocated by SCAP) and stressed genuine grievances. But they were handicapped by universal anti-Russian sentiment and their reputation for atheism. This attempt to create a mass party was abandoned, and the *Kyosanto* has been evolving into a dedicated band of conspirators, purged of "deviationist" elements and mainly secret in its operations. It would seem that it intends to follow the Russian and Chinese models in preparing for the seizure of power by armed force in a situation of social and political chaos which, it hopes, will arrive before long. The May Day riots of 1952 were in the nature of a prerevolutionary "exercise." In the meantime the party has virtually disappeared from the parliamentary scene, winning no seats at all in the election of October, 1952. A source of Communist strength is the Korean minority in Japan (numbering some 600,000) who have never forgotten nor forgiven their exploitation by the Japanese and the racial discrimination they have endured.

Election of October, 1952. Aided by prosperity based on American war supplies contracts, Shigeru Yoshida's pro-Western Liberal party won complete control of the House of Representatives in the 1952 elections with 242 seats. Yoshida then rebuilt his cabinet with all but four of its sixteen members taken from his own party. Because of the split in the Socialist ranks the next largest delegation was that of the Progressive party with eighty-nine seats.

Then came the right-wing Socialists with sixty and the left-wing Socialists with fifty-six. The remaining nineteen places were won by independents and various minor parties.

CONCLUSION

It can hardly be said with confidence that Japanese democracy is now well assured of safe development. To be sure, there are certain hopeful features. General literacy, once used to assure the indoctrination of fanatical imperialism, can be of service in educating the people in healthy independence and intelligent participation in politics. The land reforms in time may foster a sturdy peasantry undominated by the rural gentry. On the other hand, fanatical nationalism, although quiescent, has not been destroyed. Many Japanese folkways and values are hardly compatible with true democracy. The prewar business groups are again in control of Japanese industry and the living standards of the urban worker remain very low. The achievement of independence involves new burdens in defense costs and reparations to the Philippines and other countries. The loss of the Soviet Union and particularly of China as markets and sources of cheap raw materials has made a sound Japanese economy extremely difficult to achieve. Although the Japanese birth rate has dropped somewhat, overpopulation is still a serious problem. Without an empire to receive her surplus people, Japan must constantly increase her export trade or starve. If the Japanese government cannot solve these problems the forces of social and political disintegration will be released with incalculable results.

One can but hope that the remarkable unity and discipline of this industrious and ingenious people can continue to be devoted to the arts of peace and that they may become the heart of a genuine co-prosperity sphere for East Asia based upon true coöperation and the general welfare.

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